he graduated from the Virginia Military Institute in 1969 and was commissioned a second lieutenant of infantry. In the months following his graduation from Infantry Officers Basic School, Lieutenant Harper earned two of the Army's most cherished qualification badges, airborne wings and a Ranger tab. After a tour with America's famed Honor Guard, the 82d Airborne Division, Colonel Harper was ordered to the Republic of Vietnam where he was assigned to the 1st Battalion (Airmobile), 327th Infantry, setting in motion a career that would bring him many commands and responsibilities.

Among his many assignments over the next two decades, the colonel served as: commander, A Company, 18th Infantry; Executive Officer, 1st Battalion (Mechanized) 36th Infantry at Friedberg, Federal Republic of Germany; and, he commanded the 2d Battalion (Mechanized), 16th Infantry at Fort Riley, KS. In addition to his troop leading time, Colonel Harper attended the Command and General Staff College and the Naval War College; served as a staff officer and Chief of the War Plans Division; and finally, as Director of the Chief of Staff of the Army's personal staff group. In his capacity as General Sullivan's staff director, Colonel Harper helped the Chief of Staff transform the Army from a Cold War, forward deployed force into a power projection force ready to defend the Nation anywhere. Colonel Harper's keen insight, sound judgment, and able intellect have made a lasting contribution to the future of the Army and the continued security of the Nation.

Mr. President, Colonel Harper has been a model soldier throughout his career. He embodies the traits that the military expects of those who choose to serve: integrity; loyalty, selfless service: and, concern for soldiers. He is a man who has served the Nation well and he has our appreciation for his dedication and sacrifices over the past 26 years, I join his friends and colleagues in wishing him good health and great success in the years to come.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The PRESIDING OFFICER (Mr. DEWINE). Under the previous order, the Senate will now resume consideration of S. 652, the telecommunications bill, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 652) to provide for a procompetitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

(1) Dorgan modified amendment No. 1264, to require Department of Justice approval for regional Bell operating company entry into long distance services, based on the VIII(c) standard.

(2) Thurmond modified amendment No. 1265 (to amendment No. 1264) to provide for the review by the Attorney General of the United States of the entry of the Bell operating companies into interexchange telecommunications and manufacturing markets.

Subsequently, the amendment was modified further.

(3) Feinstein-Kempthorne amendment No. 1270, to strike the authority of the Federal Communications Commission to preempt State or local regulations that establish barriers to entry for interstate or intrastate telecommunications services.

Mr. PRESSLER. Mr. President, I believe the Senator from Mississippi is waiting to speak, and I have some business to take care of, which we are going to make some corrections on. I urge all my colleagues to bring their amendments to the floor. We are trying to move this bill forward. We are trying to get agreement on a lot of the amendments, and we are working feverishly on several amendments that we hope we can get agreements on. Those Senators who wish to speak or offer amendments, I hope they will bring them to the floor.

We do have the vote on the underlying Dorgan amendment at 12:30 p.m. and we will be looking forward to having several stacked votes later in the afternoon.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

AMENDMENT NO. 1265, AS MODIFIED

Mr. LOTT. Mr. President, I rise to speak in opposition to the Dorgan-Thurmond amendment that would put the Department of Justice into the middle of this telecommunications entry question. This issue really is being pushed primarily by the Department of Justice but, of course, a number of long distance companies are very much interested in it, and they are asking that the Justice Department be given a decisionmaking role in the process of reviewing applications for the Bell company entry into the long distance telephone service.

A grant of that type of authority to the Justice Department, in my opinion, is unprecedented. It goes far beyond the historical responsibility of Justice. It is a significant expansion of the Department's current authority under the MFJ, and it raises constitutional questions of due process and separation of powers. In short, I think it is a bad idea.

Who among us thinks that after all the other things that we have put in this telecommunications bill that we should have one more extremely high hurdle, and that is the Antitrust Division of the Justice Department, which would clearly complicate and certainly delay the very delicately balanced entry arrangement that is included in this bill, and that is the purpose of the amendment. It is one more dilatory hurdle that should not be included.

The Antitrust Division of the Justice Department has one duty, and that is to enforce the antitrust laws, primarily the Sherman and Clayton Acts. It has never had a decisionmaking role in connection with regulated industries. The Department has always been required to initiate a lawsuit in the event it concluded that the antitrust laws had been violated. It has no power to disapprove transactions or issue orders on its own.

While the U.S. district court has used the Department of Justice to review requests for waivers of the MFJ, the Department has no independent decisionmaking authority. That authority remains with the courts. In transportation, in energy, in financial services and other regulated businesses, Congress has delegated decisionmaking authority for approval of transactions that could have competitive implications with the agency of expertise; in this case, the FCC.

The Congress has typically directed the agency to consider factors broader than simply the impact upon competition in making determinations. This approach has worked well. Why do we want to change it? It contrasts with the role Justice seeks with regard to telecommunications and the telephone entry. Telecommunications is not the only industrial sector to have a specific group at the Justice Department. It has antitrust activity in a transportation, energy and agriculture section, a computers and finance section, a foreign commerce section and a professions and intellectual property section.

The size of the staff devoted to some of these sections is roughly equivalent to that devoted to telecommunications and, I might add, it is too many in every case. If we want to do a favor to the American people, we should move half the lawyers in the Justice Department out of the city and put them out in the real world where they belong, working in the U.S. attorneys' offices fighting real crime. But, no, we have them piled up over in these various sections and, in many cases, in my opinion, not being helpful; in fact, being harmful.

If the Department has special expertise in telecommunications such that it should be given a decisionmaking role in the regulatory process, does it not also have a special expertise in other fields as well? Today's computer, financial services, transportation, energy and telecommunications industries are far too complex and too important to our Nation's economy to elevate antitrust policy above all other considerations in regulatory decisions.

The Justice Department, in requesting a decisionmaking role in reviewing Bell company applications, for entry into long distance telephone service, seeks to assume for itself the role currently performed by U.S. District

Judge Harold Greene. It does so without defining by whom and under what standards its actions should be reviewed.

Typically, as a prosecutorial law enforcement agency, actions by the Department of Justice have largely been free of judicial review. In this case, the Department also seeks a decisionmaking role. As a decisionmaker, would the Antitrust Division's determinations be subject to the procedural protections and administrative due process safeguards of the Administrative Procedures Act? I do not know what the answer is to that question, but it is an important one.

What does this do to the Department's ability to function as a prosecutorial agency? Should one agency be both prosecutor and tribunal? That is what they are trying to do here. This is a power grab. We should not do this. Congress should reject the idea of giving the Justice Department a decisionmaking role in reviewing Bell company applications to enter the long distance telephone business. It is bad policy, bad procedure and clearly a bad precedent.

Mr. President, as Senator EXON of Nebraska very eloquently explained last Friday—I believe it was in the afternoon—Congress has passed many deregulation measures—airlines, trucking, railroads, buses, natural gas, banking, and finance. None of those measures was given executive department coequal status with regulators. What the Justice Department is seeking here is essentially a front-line role with ad hoc veto powers. Justice would be converted from a law enforcement to a regulatory agency, and it should not be. They would end up focusing chiefly on just this sector of the economy. We just do not need to create the equivalent of a whole new bureaucracy and regulatory agency just for telecommunications.

Let us look at the nearly two dozen existing safeguards that are already contemplated and required by this bill. Some people say, ''Wait a minute, you were looking at some things like this last year,'' the VIII(c) test. That was a year ago, and it did not get through. It is a different world. The committee has continued to work with all parties involved, the experts in the field, and we have laboriously come up with what I think is an understandable and fair process to open up these telephone markets.

First of all, a comprehensive, competitive checklist with 14 separate compliance points, including interconnection, unbundling, number portability. That is the heart of what we would do in the entry test.

It also has the requirement that State regulators certify compliance. There is the requirement that the Federal Communications Commission make an affirmative public interest finding. We have already fought this battle. We had an amendment to knock out the public interest requirements and, quite frankly, that was a tough one for me. I really understand that there is some ambiguity and some concern about what is this public interest test. But we have the hurdle of the checklist, we have the State regulators and we also have the public interest test. So that is three hurdles already.

There is the requirement that the Bell companies comply with separate subsidiary requirements. We want some protections, some firewalls, if you will. So there would be this separate subsidiary requirement. There is the requirement that the FCC allow for full public comment and participation, including full participation by the Antitrust Division of the Justice Department and all of its various proceedings. They are not excluded, they have a consultative role. They will be involved, but they just are not going to be a regulator under this interest test.

There is the requirement that the Bell companies comply with all existing FCC rules and regulations that are already on the books, including annual attestation, which is very rigorous in its auditing procedures; second, an elaborate cost-accounting manual and procedure; computer assisted reporting and analysis systems; and all of the existing tariff and pricing rules. There is also still the full participation of the Sherman Antitrust Act and the Clayton Act regarding mergers.

There is the full application of the Hart-Scott-Rodino Prenotification Act, which requires Justice clearance of most acquisitions. So Justice will be involved under the Hart-Scott-Rodino Act. Also the full application of the Hobbs Civil Appeals Act of the Communications Act, which makes the Antitrust Division automatically an independent party in every FCC common carrier and rulemaking appeal.

The approach in this bill was hammered out in the most bipartisan possible way, with great effort by the distinguished chairman and the distinguished ranking member, and it involved give and take. It was not easy. I think the thing that makes me realize it is probably the best test we can probably have is that nobody is perfectly happy with it. Everybody is a little unhappy with it, showing to me that it is probably fair. After all, as I said in my opening speech on this subject, what we are dealing with here is an effort by everybody to get just a fair advantage. Everybody just wants a little edge on the other one. We have tried to say, no, we are going to have a clear understanding here. Here is the checklist, the public interest tests, and all these FCC and Justice Department involvements. This is fair to both sides. And now they want to add one more long jump to the process—to put the Justice Department in a regulatory role. Big mistake. This has strong support on both sides of the aisle. It is not partisan whatsoever.

Let us use our common sense here. You know, that is a unique thing. Let us try to apply some common sense to this law and what we are trying to accomplish. Let us go with the Commerce Committee experts who drafted this bipartisan legislation. There are more than enough safeguards already in this bill and in existing law. Congress is also going to move this slowly. These changes will not happen overnight. It will take a while. And we will find some points that probably need to be addressed later on. We can still do that.

If any competitive challenges arise because the Antitrust Division is not allowed to convert itself into a telecommunications regulatory agency, then Congress can come back and revisit the issue. We are not finishing this once and for all.

I just want to say that of all the bad ideas I have seen around here this year, the idea that we come in here and put the Justice Department in a regulatory role is the worst one I have seen. It attacks the core, the center of this bill. We have addressed the questions of broadcasting and cable and fairness in radio, television, as well as the Bells and the long distance companies. This is a broad, massive bill. But the core of it all is the entry test. If we pull that thread loose, this whole thing comes undone.

Also, I want to say that I am convinced that the leaders of this committee will continue to move it forward in good faith. If we find there are some problems, or if we find when we get into conference that the House has a better idea on some of these things, there will be give and take. But this is the critical amendment.

I urge my colleagues to vote against the Dorgan amendment, vote to table the Dorgan amendment, and do not be confused by the Thurmond second-degree amendment, because it is a smaller version of the Dorgan amendment. It is the old camel nose under the tent. We should not start down that trail at this point.

Mr. HOLLINGS. If the Senator will yield. The distinguished Senator from Mississippi is really analyzing in a most cogent fashion what discourages this Senator even further. I wondered if the Senator from Mississippi agrees that it will not only bring in the Department of Justice in a regulatory fashion and responsibility, but they actually eliminate the Federal Communications Commission measuring of market competition. Listening to the language: ''In making its determination whether the requested authorization is consistent with the public interest, convenience, and necessity, the Commission shall not consider the antitrust effects of such authorization in any market for which authorization is sought.''

So when they say antitrust, that means competitive effects. They lock out the word on competition, but that is the intent. You can see how it has been drawn. ''* * * shall not consider the * * * effects of such authorization'' on competition.

So they insert the word ''antitrust'' and do not put in ''competition''. But that is the intent. So where you have the most recent and leading decision here, the U.S. Court of Appeals in Warner versus Federal Communications Commission, where they stated right to the point, ''The Commission struck an appropriate balance between the competing interests of the cable companies and their subscribers,'' giving the good government award to the FCC on measuring market competition.

You see, the thrust of this amendment, where they get this idea, is that somehow the expertise is over in the Department of Justice, and none whatever, no experience or track record whatever in the Federal Communications Commission, which is totally false. They have been doing it. I listed numerous competitive initiatives by the FCC in the past 10 years. And right to the point here, when we told them, look, in regulating the cable TV folks, find out whether or not effective competition has developed within the market. Once the market is permeated with effective competition, no longer is regulation necessary.

So my question is not just the matter of putting the nose of the camel under the tent, he is putting the whole blooming camel in and crowds out the FCC. It said, look, we do not want the FCC measuring competition and the market. ''Shall not.'' Now, say I am a communications lawyer, so I read that and I say, the FCC is doing it, but the law says, by the Congress, you have this betwixt and between. It is really confusion. Do you not see it a danger to the fundamental authority and responsibility of the FCC?

Mr. LOTT. Absolutely, I think you put your finger right on it. In that amendment, they not only want to add Justice Department, they want to supplant the FCC role here. And that, to me, again, as I have said in my remarks, is unprecedented. I think that the FCC clearly is an agency where the expertise exists. We have tried to make this bill as deregulatory and competitive as possible. But as we move toward this more competitive arena, we must have some process to look and see that the requirements of the bill have been met. The FCC is the one that should do that, not the Justice Department. So I thank the former chairman for his comments in this regard.

Mr. PRESSLER. If my friend will yield for a question, my question is, does this go to the very nature of the role of the Justice Department?

It is my understanding that the enabling act that created the Department of Justice, and the enabling legislation that created the Antitrust Subdivision of the Department of Justice, has them as the enforcer of antitrust law, and the Justice Department is the enforcer of law. They have a prosecutorial capability. And under the Administrative Procedures Act, if you go before the FCC, you have certain rights. The FCC has to be open. The FCC gives certain ex parte rights. The Justice Department can operate in secret because it is a prosecutorial agency. The Administrative Procedures Act does not fully apply. So the nature of the two agencies is different.

But, for the first time, under the Dorgan amendment, we would be creating a regulatory role, permanently. Granted, the district court judge, Judge Greene, made a regulatory role for some Justice Department lawyers who actually worked for him, by his orders. But this would be the first time as far as our research can find, that the Justice Department has been given a permanent regulatory decisionmaking role. So does not this go to the very nature of the division of power to the very nature of the Justice Department?

Mr. LOTT. I think it clearly does. I think it clearly is unprecedented. It would give this regulatory authority to an agency that has not been and should not be a regulatory agency. I think there is clearly a conflict here.

For those who do feel like the Justice Department must be involved, for those on the Judiciary Committee that worry about this sort of thing—and I am not one of them, thank goodness, I want to emphasize—this does not take away the existing law.

The Justice Department will have a consultant role. They will have rights under the antitrust laws. The Sherman Act will still be in place, as the Clayton Act will be in place, the Administrative Procedures Act will be in place, the Hobbs will be applicable and the Hart-Scott-Rodino will be in place. All will be there.

The Justice Department will be able to perform its normal role that it performs in all other areas where we have moved toward deregulation. That is what their role should be. Not this new added power.

Just in conclusion, Mr. President, I urge, again, our colleagues to support the chairman's motion to table the Dorgan amendment. That will occur at 12:30.

Mr. PRESSLER. If I could ask a quick question of my colleague. The Justice Department, under the Hobbs Appeal Act, any time somebody goes to the FCC and they get a decision that they do not like and they appeal it, the Justice Department can be a party to that right now and under our legislation. So the Justice Department is a very active participant in every FCC case.

In fact, our legislation requires consultation between the FCC and the Attorney General. But aside from that, is it not true that they have an active, aggressive role in what they are supposed to be, the legal agency of the Government, under the Hobbs Act in appeals so they can be involved as an independent party in every appeal? And just the threat of that would be very great, would it not?

Mr. LOTT. Certainly that threat would be very great.

Here is my question beyond what the Senator is saying. How would the Antitrust Division of the Justice Department handle that Hobbs Civil Appeals Act appeal by the Antitrust Division?

They are automatically an independent party. However, under this amendment, they will have already ruled in a regulatory way. How will they do that? How can you rule in a regulatory decision and then be an independent party under the Hobbs Civil Appeals Act? Would they be acting against themselves? I do not see how we make that work.

I thank my colleague on the committee for the question. I yield the floor.

Mr. PRESSLER. Mr. President, I want to take a few minutes, and if other Senators wish to speak, I will yield immediately. If other Senators wish to come to the floor to offer amendments or to speak, I will eagerly yield. We are trying to move this bill forward.

I know there are some events this morning that have detained some Senators, and there is the Les Aspin memorial service this afternoon that will detain some of our Members.

We are trying to move the tortuous Senate process forward at a faster rate.

I want to take a few minutes to discuss yet another example of why the Justice Department should not be given the burden to carry out the intent of the amendment offered by Senator DORGAN.

I have previously established a clear, unequivocal record. DOJ does not act in a timely manner. Last night I had several charts here showing how the Department, although it was asked to do things within a 30-day period, has dragged things out over 3 years or more.

Additionally and importantly, the Department cannot be trusted to enforce the standard of review. Currently, the DOJ and the court, under the MFJ, are to apply an VIII(c) test. That is also the standard in the Dorgan amendment. The recent Ameritech plan changes the VIII(c) test.

Now, the Department has announced a plan to delay new competition in long distance until the Department's blueprint for local telephone markets has been implemented. The plan is styled as an agreement with Ameritech.

According to the New York Times, the announcement on Monday is clearly timed to coincide with events in Congress. Perhaps most important from a political standpoint, the Justice Department wants to preserve an important role in determining when the Bells should win freedom—this, according to an article by Edmund Andrews in the New York Times, April 2, 1995.

I think that goes to the heart of it. The Justice Department is trying to preserve a role here. For the first time in my years up here, I see a major Department seeking and demanding a role and lobbying for it. That troubles me a great deal.

Despite its length and complexity, many key details of the blueprint await further Department review and approval. This is the Ameritech agreement. The Department has rushed the announcement prior to the completion of the period for public comments on the plan in an effort to derail legislation pending in Congress that would limit the Department's role in regulating the telecommunications industry.

I see a colleague has arrived. I will yield to any Senator who has an amendment or a speech. We are trying to move this bill forward. I am delighted to yield the floor.

Mr. MCCAIN. I will have an amendment in a minute to bring to the floor. I am very pleased that the Senator from South Dakota, the distinguished chairman of the committee, solicits a speech from me. It is not very often. It must be an ample indication of the boredom that has set in here on the floor.

While I am waiting to propose the amendment, I would like to reiterate my appreciation for the enormous effort expended by the chairman of the committee who has done just a superhuman job of trying to shepherd this extremely complex and difficult piece of legislation through this body.

Again, I want to thank him for all of the cooperation and courtesy that he has shown me and other Members of this body as we have gone through this effort. I hope that there is light at the end of the tunnel, to borrow an old Vietnam phrase, that we are nearing the end of the consideration of this very important legislation.

Mr. President, I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1276

(Purpose: To require a voucher system to provide for payment of universal service)

Mr. MCCAIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona, [Mr. MCCAIN], proposes an amendment numbered 1276.

Mr. MCCAIN. Mr. President, I ask unanimous consent further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 43, strike out line 2 and insert in lieu thereof the following: Act.

''(k) TRANSITION TO ALTERNATIVE SUPPORT SYSTEM.—Notwithstanding any other provision of this Act, beginning 2 years after the date of the enactment the Telecommunications Act of 1995, support payments for universal service under this Act shall occur in accordance with the provisions of subsection (l) rather than any other provisions of this Act.

''(l) VOUCHER SYSTEM.—

''(1) IN GENERAL.—Not later than 2 years after the date of the enactment of the Telecommunications Act of 1995, the Commission shall prescribe regulations to provide for the payment of support payments for universal service through a voucher system under this subsection.

''(2) INDIVIDUALS ELIGIBLE TO MAKE PAYMENTS BY VOUCHER.—Payment of support payments for universal service by voucher under this subsection may be made only by individuals—

''(A) who are customers of telecommunications carriers described in paragraph (3); and

''(B) whose income in the preceding year was an amount equal to or less than the amount equal to 200 percent of the poverty level for that year.

''(3) CARRIERS ELIGIBLE TO RECEIVE VOUCHERS.—Telecommunications carriers eligible to receive support payments for universal service by voucher under this subsection are telecommunications carriers designated as essential telecommunications carriers in accordance with subsection (f).

''(4) VOUCHERS.—

''(A) IN GENERAL.—The Commission shall provide in the regulations under this subsection for the distribution to individuals described in paragraph (2) of vouchers that may be used by such individuals as payment for telecommunications services received by such individuals from telecommunications carriers described in paragraph (3).

''(B) VALUE OF VOUCHERS.—The Commission shall determine the value of vouchers distributed under this paragraph.

''(C) USE OF VOUCHERS.—Individuals to whom vouchers are distributed under this paragraph may utilize such vouchers as payment for the charges for telecommunications services that are imposed on such persons by telecommunications carriers referred to in subparagraph (A).

''(D) ACCEPTANCE OF VOUCHERS.—Each telecommunications carrier referred to in subparagraph (A) shall accept vouchers under this paragraph as payment for charges for telecommunications services that are imposed by the telecommunications carrier on individuals described in paragraph (2).

''(E) REIMBURSEMENT.—The Commission shall, upon submittal of vouchers by a telecommunications carrier, reimburse the telecommunications carrier in an amount equal to the value of the vouchers submitted. Amounts necessary for reimbursements under this subparagraph shall be derived from contributions for universal support under subsection (c).''.

Mr. MCCAIN. Mr. President, at the outset, I have no illusions about the ability to adopt this amendment. I do not think it will be adopted. I do, however, think that it is a defining issue in how we view the role of Government and the role of our regulatory bodies.

In an attempt to deregulate telecommunications in America, and I think it is a defining issue very frankly, in whether we want to continue the complex, myriad, incomprehensible method that we are using today to try to attempt to provide access by all Americans to telecommunications facility.

Right now, I do not know of anyone who knows how we subsidize, exactly, people who are in need of the basic telecommunications services in this country. This amendment would make it very clear and very simple. It would be the provision of vouchers for those who need those services. It would replace the current telecommunications subsidy scheme.

Mr. President, both the current system and that envisioned by the pending legislation mandates subsidy flows from company to company. As one former council to the FCC stated, ''From one rich person to another rich person.''

This amendment would fundamentally change that system.

Sixty-one years ago, the Congress passed the Communications Act of 1934. The Act mandated that every American, regardless of where they lived, receive basic telephone service at approximately the same rate. Therefore, individuals whether they live in urban America or rural America would pay the same rate for telephone service, regardless of disparities in cost of supplying such service.

This concept of urban-rural equality known as ''universal service'' was predicated on the agrarian/rural based demographics of our Nation at that time. Poorer rural areas required urban subsidies to meet the goal of universal service. However, demographics have changed since 1934. Today, the majority of Americans now live in urban settings. Telecommunications subsidy schemes, however, have not changed and the urban poor are being unfairly forced to pay for telephone service for those who can much better afford it.

It is simply not fair for those living at the poverty level in the inner city to have to pay for telephone service to the ultra wealthy with second homes in places such as Telluride, Vail, Martha's Vineyard, and the Boulders Resort Area of Arizona.

It is time for a fresh look. As we debate communications law reform, we must step back and ask who is paying for what services. The answer is that those who live in urban areas, as envisioned in 1934, are subsidizing telephone services for those who live in rural areas.

The belief that a universal service subsidy mechanism designed in the 1930's is relevant today and must continue is preposterous. Not only does it unfairly punish lower income, inner city Americans, but it discourages future competition in the local loop.

Vigorous competition with its many benefits to the consumer will only flourish in a free market environment in which entrepreneurs believe they can enter a line of business and make a profit. However, since the current telephone subsidy scheme gives all benefits to the incumbent company, the question arises: What smart businessman or women would want to compete against the entrenched existing company? The answer is none. Thus, if we truly believe in competition for telephone services, we should advocate an end to subsidies.

We should consider a phase out of existing cross-subsidy mechanisms, including long-distance access charges, subsidization of residential rates by business rates, subsidization of rural rates by urban rates, and other rate

averaging mechanisms in order to ensure that market prices accurately reflect the true cost of providing service. Eliminating these barriers to the free market will enhance competition and experience has proven that competition causes prices to fall and improves customer service. When as many subsidies as possible are eliminated, when free market economics has substantially replaced depression-era subsidies, the universal service goal that is contained in existing law could be achieved by instituting a means-tested voucher system to ensure that everyone has the ability to receive telephone service.

Under a voucher system, any household, regardless of where they live, who earns under 200 percent of the poverty level would be eligible for telephone vouchers. Recipients could use the vouchers to pay for any local telephone service they desired, including cellular or in the near future, satellite communications systems such as PCS. The States, not the Federal Government should administer the voucher system because they can best respond to local priorities and needs.

Vouchers could be reclaimed for dollars by local telephone companies chosen by the consumer to provide service. Therefore, the economic viability of companies who have benefits from the current subsidy scheme will only be in jeopardy if their customers decide they no longer like their current phone company and seek a new provider, in other words free-market economics at work.

Mr. President, I recognize that a voucher system may not be immediately embraced by small rural telephone companies. They are happy with the status quo that ensures them a steady revenue stream. A voucher system does not recognize incumbency, it recognizes merit.

Reality tells us that the elimination of subsidies and the creation of a voucher system would not only empower individuals but would encourage telephone companies to compete more for local business. A voucher system is still a subsidy, but it is a much more benign subsidy then the anticompetitive one which currently exists.

Although the food stamp program is not embraced by all, it is important to note that we do not send money directly to the local Safeway, telling them to bag a government proscribed list of groceries, and then to deliver them to everyone in a certain neighborhood, regardless of income. However, that is precisely what we do with local telephone service. There is simply no logic in today's society for continuation of the current subsidy mechanisms.

Last, it is important to note that while 99 percent of Americans have purchased televisions without the benefit of a subsidy, only 93 percent of all households have telephones. Perhaps due to the empowerment of individuals that a voucher system would perpetuate, as many American will have telephones as have televisions.

Mr. President, this amendment is a radical change from the status quo, and therefore I am under no allusion that it will pass today. I do believe it lays the groundwork for the future and should be supported by the Senate.

There have been a number of interesting articles written about the voucher system and the present system. One of them was in the Wall Street Journal last January 20. It is by Mr. Adam Thierer, who is an analyst with the Heritage Foundation in Washington.

I would like to quote from some of this article, because I think it frames the issue pretty well. It begins by saying:

Republicans in Congress will soon introduce deregulatory legislation that could revolutionize the way America's telecommunications sector works. An outline of the proposed legislation in the Senate reveals that Republicans plan to eliminate remaining barriers to market entry * * * the Republican plan at least starts off on the right foot.

Yet it is evident from the outline that Republicans are no different from Democrats when it comes to the Holy Grail of telecommunications—universal service. The GOP lawmaker's plan for universal service may place everything else they hope to accomplish at risk.

The desire to create a ubiquitous telecommunications system is indeed noble. The problem is that, by mandating universal telephone service, policy makers effectively required that a monopolistic system be developed to deliver service to all. That meant devising a crazy-quilt of internal industry taxes that force low-cost providers to cross-subsidize high-cost providers. Hence, billions of dollars of subsidies now flow from long-distance to local providers, from businesses to residences, and from urban to rural users.

But, despite these bountiful subsidies, roughly one American out of every 17 still does not have a telephone in his home.

* * * * *

Worse yet, by arbitrarily averaging rates across the nation, policy makers have unintentionally created a remarkably regressive tax. Hence, a poor single mother on welfare in the inner city is often paying artificially high rates to help subsidize service to wealthy families who live in nearby rural areas. There is nothing equitable about a system that arbitrarily assesses billions of dollars of internal industry taxes on consumers while failing to provide service to all.

Yet policy makers continue to support the current cross-subsidy taxes in the mistaken belief that they encourage ever-increasing subscribership levels. Economists David Kaserman and John Mayo have appropriately labeled this belief a ''fairy tale,'' since no causal relationship exists between subsidies and subscribership levels. In fact, the exact opposite is the case. The 1980s saw decreased subsidies and increased subscribership levels.

* * * * *

If a free-market approach is unpalatable, Republicans should consider means-tested telecom vouchers. State and local governments, not the feds, could simply offer poor residents a voucher to purchase service from a provider of their choice. Make no mistake, this is still a subsidy, but at least it is one that will not discourage competitive entry. It would be funded through general tax revenues, to encourage legislators to target the subsidy as narrowly as possible.

One GOP staffer recently told me this approach is ''ahead of its time.'' In fact, this idea is somewhat behind the times, but it is still the only solution that could co-exist with a competitive marketplace. Free markets, open access, and consumer choice are the better guarantors of innovative goods, lower prices, and true universal service. If policy makers instead continue to place faith in the fairy tale of mandated universal service, they will still be discussing how to create a competitive marketplace at the turn of the century.

I am afraid that Mr. Thierer's prediction is, unfortunately, all too true. On January 11, 1995, in the Investors Business Daily, there was an article that I think has some interesting facts in it.

About 6% of all American homes are still without telephones. But the U.S. Census Bureau reports 99% own radios, 98% have televisions and 75% video cassette recorders—a technology barely 20 years old.

Discounting the implied subsidies of free airwaves for broadcasters, radios and TVs haven't been bolstered by anything like the complex web of subsidies and regulations created over the years to foster universal telephone service.

Several federal agencies manage about $1 billion in payments made by big phone companies and put in the pockets of small ones. But the phone companies themselves set aside and transfer funds, as required by federal rules, to subsidize service to the needy and rural communities.

These subsidies, which total billions of dollars, come from three sources: business users, long distance calls and urban customers, including residential. They are used to artificially reduce the cost of serving rural areas, and to provide below-cost service to poorer households.

But analysts say the administrators of universal service funds, whether at federal agencies or in phone companies, do little to assess the need for assistance. And rate averaging, used by large phone companies, often forces the poorest inner-city households to subsidize rural service for even the richest gentlemen farmers and jet-setting skiers.

''The telecommunications welfare state has been a disaster,'' asserted Heritage Foundation analyst Adam Thierer in a study published recently. ''The regulatory model of the past six decades has failed.''

In a study released Jan. 5, for instance, Wayne Leighton of the Center for Market Processes in Fairfax, Va., and Citizens for a Sound Economy in Washington, describes how the tiny resort community of Bretton Woods, N.H., received $22,153 in subsidies last year, because its remote location on the shoulders of the White Mountains makes it a ''high-cost'' area to serve. That equates to $82 for each of the community's 269 phone lines—many of which serve luxury hotels.

''High-cost is not the same as high need,'' Leighton said.

''Indeed,'' Leighton added, ''poor inner-city residents rarely benefit from these programs, since their telephone companies spread costs over a great many users. . . . The result is subsidies often help middle- and upper-class subscribers lower their monthly phone bills.''

The giant regional telephone monopolies, which want to be allowed to compete with long-distance and cable television companies in those markets, say universal service subsidies cost about $20 billion a year.

Leighton, citing a study by the Telecommunications Industries Analysis Project, estimates the net transfer from urban customers to rural at $9.3 billion a year.

WHO PAYS?

''A lot of money can be pulled from an urban area, without regarding who it's being pulled from,'' noted Heritage's Thierer.

To see the effects of subsidies, compare the annual average household cost for telephone service in rural and urban areas. According to a Federal Communications Commission study published in July 1994, the average ''rural'' household spent $549 in 1990, while in big cities like New York, Chicago and Los Angeles, the comparable figures were $770, $660 and $748, respectively.

Interestingly, a majority of the residents in all three of these major cities are either black or Hispanic. In other major cities with large minority populations, like Detroit, Atlanta, Washington and Houston, the pattern is similar—all had substantially higher average household phone bills than did rural households.

I do not understand how we defend a system that charges higher rates for some of the poorest people in America and minorities. We are having a great debate and we are going to continue to have a great debate over affirmative action. But it seems to me that at least we ought to cure what is clearly reverse affirmation actions.

Consider just the poorest Americans, who presumably would qualify for subsidized rates as low as $6 a month. The fact that only 73% of households with annual incomes of less than $5,000 had phones in 1993 again suggests that the subsidies do not reach their intended targets.

Let me point out again that 73 percent of households in America with annual incomes of less than $5,000 had phones in 1993.

* * * But by one government estimate, 91% of all ''poor'' households owned color televisions by 1990.

The FCC data also show that between 1984 and 1992, America's black households on average spent between 12% and 23% more on phone services each month than did white households.

And according to 1990 census data, 68% of all blacks lived in the nation's 75 largest urban areas—traditionally the source of most phone company revenues.

Broken down by race, 77% of white households in the poorest segment had phones, while just 65% of blacks did. In the next highest income group, from $5,000 to $7,499, the percentages rose to 86% of whites and 78% of blacks.

The sole reason telecommunications is not as competitive as these other high-technology sectors is that, unlike them, it is not governed primarily by consumer choice.

* * * * *

''There are other options,'' Thierer observed, ''but we're just so scared about letting go of the past.''

But so much has changed, critics of the current system point out that a wealth of new technologies makes the old ways completely obsolete. Today, cable television, electric power and wireless systems can all compete with telephone networks.

Free-market reformers could grow more optimistic, if they listen to House Speaker Newt Gingrich, R–Ga. In recent testimony to the House Ways and Means Committee, Gingrich suggested new policies should reflect thinking ''beyond the norm.''

Mr. President, I am first to admit that a system of vouchers would be clearly beyond the norm.

Mr. President, I received a study called ''Local Competition and Universal Service, New Solutions and Old Myths.''

The mechanism that they propose to address any such ''market failure'' would be:

. . . an explicit, market-compatible subsidy system with three primary components. (1) universal service subsidies should be provided directly to end users, (2) all subsidies must be clearly defined and designed to terminate over time, and (3) all funding must be raised explicitly as a telephone subsidy.

On the issue of furnishing the subsidy to end users:

There are numerous advantages to this approach. Combined with means testing, it would ensure that only those customers in need of a subsidy would receive money. Therefore, to minimize market interference, subsidies should be provided directly to the end users—in the form of telephone stamps—who are the intended beneficiaries of the subsidy. This is a three-step process: identify end users who cannot afford service; calculate the differential between what they can afford and the price of service; then provide an appropriate amount of subsidy directly to the consumer. Carefully tailored means testing should minimize any abuse of the program.

This approach reduces marketplace interference by permitting the customers to choose how they spend their ''telephone stamps.'' For example, some urban customers might choose among competitively-priced alternatives such as cellular or PCS service rather than ordinary wireline service as better suiting their multiple-job lifestyles, while still being available for use at home. Rural residents individually might also prefer a wireless to a wired service, or might collectively for their region obtain bids from multiple providers of multiple technologies.

And this mechanism of distributing funds directly to end users also avoids the pre-selection of a particular provider. Since customers can spend their ''telephone stamps'' as they wish, they will choose the technology and provider who best matches their needs and budget. It may be that in some locations, only one provider makes service available; in that case that provider will receive all the subsidy money, but by operation of the marketplace rather than by regulatory fiat. But it may also be that the availability of the pool of money represented by the sum of all the ''telephone stamps'' acts as an incentive to draw alternative providers and alternative technologies into the area.

The most difficult problem facing direct user subsidization is the design of an appropriately tailored mechanism for distribution which will take many forms such as tax breaks, telephone stamps, or service credits. These credits should be awarded on a needs basis as determined through some more means testing, perhaps by tying it to other means-tested assistance programs in the State; that is, anyone who qualifies for any program on the State's list of means-tested programs also qualifies for a preset level of telephone assistance set to enable them to obtain basic telephone access.

There would be no need to create a separate bureaucracy. Similarly, the State agency that currently issues assistance, such as food stamps, can also issue the telephone stamps. The consumer could use the equivalent telephone stamps to purchase network service capability if they want by mailing in the stamps with their bill.

As competition drives down the price of technological alternatives, consumers could choose from an expanding array of network alternatives. This would allow customers to maximize the use of the network by placing at their disposal the technology best suited to their means, lifestyles, and location. The providers cash in telephone stamps just as grocery stores do with food stamps.

Mr. President, universal service historically has been the subject of more assumptions than studies and discussions of the issue and have generated more heat than light.

The presumptions of the past have governed the debate for far too long. Rethinking these assumptions clears the way and focuses the discussion on the issues that face telecommunications today. The issue today is not the creation of universal service but its preservation. Services are available today to most Americans. The remaining issue is service activation and affordability. Open competition among fully inoperative networks for local service priced at its true cost, combined with our proposed explicit and targeted approach to any necessary subsidies, is the best way to maintain universal service while bringing the benefits of a competitive marketplace to all telephone customers.

Mr. President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

The yeas and nays have been requested. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. McCAIN. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the McCain amendment, which is No. 1276.

Mr. GORTON. Mr. President, I ask unanimous consent that we return to the Feinstein-Kempthorne amendment.

Mr. McCAIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. I just proposed an amendment. I had anticipated that we would debate the amendment and vote on it at an appropriate time.

Mr. GORTON. I hope that the Senator will not object. The Senate has almost completed its debate on a Feinstein-Kempthorne amendment which was proposed last night. I have a second-degree amendment for that which I would like to get in so that the body

will understand exactly what it is going to be voting on on that issue.

Mr. McCAIN. Let me say to my friend, I was over in a hearing. The request was to come over and propose amendments because amendments were needed in the Chamber. I then left the hearing. I came over here with my amendment, asked that the pending amendment be set aside at the request of the distinguished chairman, proposed the amendment, and fully anticipated debate and a vote on that amendment.

Mr. PRESSLER. If my colleague will yield, we are going to accommodate. The problem, I am told this morning, is that one of our Members is at a Vietnam veterans ceremony. We are going to try to stack the votes, if we could have the vote at 4 o'clock. That is what the leadership tells me, they are going to try to stack votes; that we have votes after the Les Aspin memorial service this afternoon.

I did not create these things, but that is the situation we are in.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington has the floor.

Mr. McCAIN. Who has the floor, Mr. President?

The PRESIDING OFFICER. The Senator from Washington has the floor.

Mr. GORTON. I made a unanimous consent request and the Senator from Arizona objected.

Mr. McCAIN. I object.

Mr. GORTON. I would like to continue with the consideration of the amendment.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORTON. Mr. President, I ask unanimous consent that we return to the Feinstein-Kempthorne amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 1277 TO AMENDMENT NO. 1270

(Purpose: To limit, rather than strike, the preemption language)

Mr. GORTON. Mr. President, I send a second-degree amendment to the Feinstein-Kempthorne amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 1277 to amendment No. 1270.

In the matter proposed to be stricken, strike ''or is inconsistent with this section, the Commission shall promptly'' and insert ''subsection (a) or (b), the Commission shall''.

Mr. GORTON. Mr. President, last night, our distinguished colleagues from California and Idaho proposed an amendment with respect to a section entitled ''Removal of Barriers to Entry.'' That section in toto says that the States and local communities cannot impose State or local requirements that may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services.

Mr. President, that, of course, is a very, very broad prohibition against State and local activities. And so thereafter there follow two subsections that attempt to carve out reasonable exemptions to that State and local authority. One has to do specifically with telecommunications providers themselves and speaks in the general term of allowing States to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers, which are, of course, the precise goals of this Federal statute itself.

However, the third exception is ''Local Government Authority.'' That local government authority relates to the right of local governments to manage public rights-of-way, require fair and reasonable compensation to telecommunications providers, the use of public rights-of-way on a nondiscriminatory basis, and so on.

Then the final subsection is a preemptive subsection, Mr. President, and it reads:

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates or is inconsistent with this section, the Commission shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

Now, our two distinguished colleagues said that that preemption was much too broad, that its effect would be to say to a major telecommunications provider or utility all you have to do, if the city of San Francisco or the city of Boise attempts to tell you what hours you can dig in the city streets or how much noise you can make or how you have to reimburse the city for the damage to its public rights-of-way, that all that the utility would have to do would be to appeal to the Federal Communications Commission in Washington, DC, and thereby remove what is primarily a local question and make a Federal question out of it which had to be decided in Washington, DC, by the Federal Communications Commission. And so the Feinstein-Kempthorne amendment strikes this entire preemption section.

Now, the Senator from California I think very properly tells us what the impact of that will be. It does not impact the substance of the first three subsections of this section at all, but it does shift the forum in which a question about those three subsections is decided. Instead of being the Federal Communications Commission with an appeal to a Federal court here in the District of Columbia, those controversies will be decided by the various district courts of the United States from one part of this country across to every other single one.

Now, Mr. President, in the view of this Senator, there is real justification in the argument for both sides of this question. The argument in favor of the section as it has been reported by the Commerce Committee is that we are talking about the promotion of competition. We are talking about a nationwide telecommunications system.

There ought to be one center place where these questions are appropriately decided by one Federal entity which recognizes the impact of these rules from one part of the country to another and one Federal court of appeals.

On the other hand, the localism argument that cities, counties, local communities should control the use of their own streets and should not be required to come to Washington, DC, to defend a permit action for digging up a street, for improving or building a new utility also has great force and effect, Mr. President. I think it is a persuasive argument.

So in order to try to balance the general authority of a single Federal Communications Commission against the specific authority of local communities, I have offered a second-degree amendment to the Feinstein-Kempthorne amendment. I hope that the sponsors of the amendment will consider it to be a friendly one.

More often than not in this body, second-degree amendments are designed to totally subvert first-degree amendments to move in a completely different direction, sometimes to save Members from embarrassing votes. This is not such a case.

I have read the arguments that were made by the two Senators who sponsored the first-degree amendment. I agree with them, but almost without exception, their arguments speak about the control by cities and other local communities over their own rights of way, an area in which their authority should clearly be preserved, a field in which they should not be required to have to come to Washington, DC, in order to defend their local permitting or ordinance-setting actions.

I agree with those two Senators in that respect, but I do not agree that we should sweep away all of the preemption from an entire section, which is entitled ''Removal of Barriers to Entry''; that fundamental removal to those barriers, an action by a State or a city which says only one telephone company can operate in a given field, for example, or only one cable system can operate in a given field, should not be exempted from a preemption and from a national policy set by the Federal Communications Commission.

So this amendment does two things, both significant. The first is that it narrows the preemption by striking the phrase ''is inconsistent with'' so that it now allows for a preemption only for a requirement that violates the section. And second, it changes it by limiting the preemption section to the first two subsections of new section 254; that is, the general statement and the State control over utilities.

There is no preemption, even if my second-degree amendment is adopted, Mr. President, for subsection (c) which is entitled, ''Local Government Authority,'' and which is the subsection which preserves to local governments control over their public rights of way. It accepts the proposition from those two Senators that these local powers should be retained locally, that any challenge to them take place in the Federal district court in that locality and that the Federal Communications Commission not be able to preempt such actions.

So I hope that it is a way out of the dilemma in which we find ourselves, the preservation of that local authority without subverting what ought to be nationwide authority. It will be a while, I think, before this comes to a vote. I commend this middle ground to both the managers of the bill and the sponsors of the amendment. I hope that they will accept it.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER (Mr. FRIST). The Senator from North Dakota.

Mr. DORGAN. Mr. President, I ask unanimous consent that the pending amendment be set aside so that I may offer another amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1278

(Purpose: To provide for Federal Communications Commission review of television broadcast ownership restrictions)

Mr. DORGAN. Mr. President, I have an amendment at the desk. I offer a first-degree amendment on the issue of broadcast ownership restrictions.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from North Dakota [Mr. DORGAN], for himself, Mr. HELMS and Mr. KERREY, proposes an amendment numbered 1278.

Mr. DORGAN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike paragraph (1) of subsection (b) of Section (207) and insert in lieu thereof the following:

''(b) REVIEW AND MODIFICATION OF BROADCAST RULES.—The Commission shall:

''(1) modify or remove such national and local ownership rules on radio and television broadcasters as are necessary to ensure that broadcasters are able to compete fairly with other media providers while ensuring that the public receives information from a diversity of media sources and localism and service in the public interest is protected, taking into consideration the economic dominance of providers in a market and

''(2) review the ownership restriction in section 613(a)(1).''

Mr. DORGAN. Mr. President, I am scheduled to testify before a base closing hearing in the Cannon Building in a matter of minutes, so I must leave the floor. I did want to offer this first-degree amendment. It would essentially eliminate two provisions, the provisions in the underlying bill that now abolish the current ownership restrictions on television stations.

We currently have a 12-station ownership limitation on television stations and a 25-percent-of-the-national-audience cap. I believe we ought to restore that and provide the authority to the FCC to make those determinations. I think it makes no sense to include in this bill a provision that simply withdraws those restrictions on ownership.

This bill talks about competition. If we allow this to continue in this bill, we will see a greater concentration of television ownership in this country, and we will end up with a half a dozen companies controlling virtually all the television stations in America. I do not think anybody can honestly disagree that that is the result of the provision in the underlying bill.

I think we ought to restore the 12-station limit and the 25-percent-national-audience cap and give the FCC the authority to make its own judgment and evaluate what kind of competition exists and what is in the public interest with respect to this competition. This provision makes no sense at all in the underlying bill.

I will ask for the yeas and nays at an appropriate point. I must leave to testify before the Base Closing Commission, and then I will return to debate this legislation. My understanding is the Senator from Nebraska, Senator KERREY, wants to speak on this. I am pleased he will do so while I am absent from the Chamber.

Mr. KERREY. Mr. President, I ask unanimous consent to be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERREY. Mr. President, before the Senator from North Dakota leaves, it is my intent, unless he objects now, after making my comments to ask for the yeas and nays on this amendment, unless the Senator will object to my asking at the end of my remarks.

Mr. DORGAN. I believe Senator HELMS wants to speak on it and probably Senator SIMON as well. The Senator can ask for the yeas and nays, sure.

Mr. KERREY. Mr. President, first, let me say that the central point of this whole legislation has been that we are trying to create a regulatory environment where competition can produce lower prices and higher quality service for the American consumer. The service that is being sold is information. Unlike many other commodities that we buy—natural gas, for example, transportation, and so forth—this is a very unusual commodity that we are buying, information, although maybe commodity is not exactly the precise words like you are buying hardware and other sorts of things.

It really is an issue of giving power to somebody to control to a very great extent the information that we get.

You say, ''Well, I have community standards in place.'' That is true, the FCC does have control over community standards, and there are lots of other regulatory determinations that could be made by the FCC, but it is the power to broadcast, the power to publish, the power to transmit information. It is the word, Mr. President. Unlike other commodities, I have only 24 hours in the day in which I can process this information, in which I can either listen to the radio or watch television or read a newspaper, or go on-line, or call my kids, or listen to my kids, or engage in some manner, shape, or form in purchasing or using the information services or equipment that this $800 to $900 billion industry is out there manufacturing and producing and trying to get me to buy. So I have 24 hours a day. That is all anybody has.

What we have, over the years, understood is that the person who controls that information very often controls a great deal more than just the right to sell to you. The person who controls the right to own a station, radio or television, or who controls the newspaper, who controls some other information source, they are in control of much more than just the right to sell you some product. In fact, rarely—I am not sure I can even cite an owner that does not respect that they have more than just a fiduciary responsibility to shareholders. They understand that they have a responsibility that is larger than that.

This amendment, I believe, maintains what we have traditionally done, and that is to say you can get all the competition you want with 12 stations and all the competition you want with 25 percent—25 percent ownership in a service area. That has worked. Again, I have not heard consumers come to me on this one and say, gee, could you lift the ownership restrictions because we are not getting the kind of quality service we want, and we believe that if we have 35 percent ownership of our television and radio stations in a service area, that that will improve the quality of our product, and if we concentrate this industry even more, we are going to get improved quality of product.

I believe that the amendment before us illustrates this issue that I have been raising a time or two on the floor, which is that at stake here is the power of a business or an individual to do something—the power of an individual or a corporation, mostly, to do something that they are currently prohibited from doing. A corporation that

owns radio or television stations currently has certain restrictions placed on them, and the bill, as currently described, would lift a number of those restrictions.

Mr. President, I ask unanimous consent that an article in this morning's Washington Post by Tom Shales be printed in the RECORD at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, June 13, 1995]

FAT CAT BROADCAST BONANZA

(By Tom Shales)

It's happening again. Congress is going ever so slightly insane. The telecommunications deregulation bill now being debated in the Senate, with a vote expected today or tomorrow, is a monstrosity. In the guise of encouraging competition, it will help create huge new concentrations of media power.

There's something for everybody in the package, with the notable exception of you and me. Broadcasters, cablecasters, telephone companies and gigantic media conglomerates all get fabulous prizes. Congress is parceling out the future among the communications superpowers, which stand to get more super and more powerful, and certainly more profitable, as a result.

Limits on multiple ownership would be eased by the bill, so that any individual owner could control stations serving up to 35 percent of the country (50 percent in the even crazier House version), versus 25 percent now. There would be no limit on the number of radio stations owned. Cable and phone companies could merge in municipalities with populations up to 50,000.

Broadcast licenses of local TV stations would be extended from a five-year to a 10-year term and would be even more easily renewed than they are now. It would become nearly impossible for angry civic groups or individuals to challenge the licenses of even the most irresponsible broadcasters.

In addition, the rate controls that were imposed on the cable industry in 1992, and have saved consumers $3 billion in the years since, would be abolished, so that your local cable company could hike those rates right back up again.

Sen. Bob Dole (R–Kan.), majority leader and presidential candidate, is trying to ram the legislation through as quickly as possible. Tomorrow he wants to take up the issue of welfare reform, which is rather ironic considering that his deregulation efforts amount to a bounteous welfare program for the very, very, very rich.

Dole made news recently when he took Time Warner Co. to task for releasing violent movies and rap records with incendiary lyrics. His little tirade was a sham and a smoke screen. Measures Dole supports would enable corporate giants such as Time Warner to grow exponentially.

''Here's the hypocrisy,'' says media activist Andrew Jay Schwartzman. ''Bob Dole sits there on 'Meet the Press' and says, yes, he got $23,000 from Time Warner in campaign contributions, and that just proves he can't be bought.'' He criticizes Time Warner's corporate responsibility and acts like he's being tough on them, but it's in a way that won't affect their bottom line at all.

''Meanwhile he is rushing to the floor with a bill that will deregulate cable rates and expedite the entry of cable into local telephone service, and no company is pressing harder for this bill than—guess who—Time Warner.''

Schwartzman, executive director of the Media Access Project, says that the legislation does a lot of ''awful things'' but that the worst may be opening the doors to ''a huge consolidation of broadcast ownership, so that four, five, six or seven companies could own virtually all the television stations in the United States.''

Gene Kimmelman, co-director of Consumers Union, calls the legislation ''deregulatory gobbledygook'' and says it would remove virtually every obstacle to concentration of ownership in mass media. The deregulation of cable rates with no competition to cable firmly in place is ''just a travesty,'' Kimmelman says, and allowing more joint ventures and mergers among media giants is ''the most illogical policy decision you could make if you want a competitive marketplace.''

The legislation would also hand over a new chunk of the broadcast spectrum to commercial broadcasters to do with, and profit from, as they please. Digital compression of broadcast signals will soon make more signal space available, space that Schwartzman refers to as ''beachfront property.'' Before it even exists, Congress wants to give it away.

Broadcasters could use the additional channels for pay TV or home shopping channels or anything else that might fatten their bank accounts.

There's more. Those politicians who are always saying they want to get the government off our backs don't mind letting it into our homes. Senators have been rushing forth with amendments designed to censor content, whether on cable TV or in the cyberspace of the Internet. The provisions would probably be struck down by courts as antithetical to the First Amendment anyway, but legislators know how well it plays back home when they attack ''indecency'' on the House or Senate floor.

Late yesterday Sens. Dianne Feinstein (D-Calif.) and Trent Lott (R-Miss.) called for an amendment requiring cablecasters to ''scramble'' the signals of adults-only channels offering sexually explicit programming. The signals already are scrambled, and you have to request them and pay for them to get them. Not enough, Feinstein and Lott said; they must be scrambled more.

The amendment passed 91–0.

It's a mad, mad, mad, mad world.

An amendment expected to be introduced today would require that the infamous V-chip be installed in all new television sets, and that networks and stations be forced to encode their broadcasts in compliance. The V-chip would allow parents to prevent violent programs from being seen on their TV sets. Of course, they could turn them off, or switch to another channel, but that's so much trouble. Why not have Big Brother do it for you?

The telecommunications legislation is being sponsored in the Senate by Commerce Committee Chairman Larry Pressler (R-S.D.), whose initial proposal was that all limits on multiple ownership be dropped. Even his supporters laughed at that one.

Dole is the one who's ramrodding the legislation through, and it's apparently part of an overall Republican plan for American media, and most parts of the plan are bad. They include defunding and essentially destroying public television, one of the few wee alternatives to commercial broadcasting and its junkiness, and even, in the Newt Gingrich wing of the party, abolishing the Federal Communications Commission, put in place decades ago to safeguard the public's ''interest, convenience and necessity.''

It's the interest, convenience and necessity of media magnates that appears to be the sole priority now. ''The big loser in all this, of course, is the public,'' wrote media expert Ken Auletta in a recent New Yorker piece about the lavishness of media contributions to politicians. The communications industry is the sixth-largest PAC giver, Auletta noted.

Viacom, a huge media conglomerate, had plans to sponsor a big fund-raising breakfast for Pressler this month, Auletta reported, but the plans were dropped once Auletta started making inquiries: ''Asked through a spokeswoman about the propriety of a committee chairman's shopping for money from industries he regulated, Pressler declined to respond.''

The perfect future envisioned by the Republicans and some conservative Democrats seems to consist of media ownership in very few hands, but hands that hold tight rein over the political content of reporting and entertainment programming. Gingrich recently appeared before an assemblage of mass media CEOs at a dinner sponsored by the right-wing Heritage Foundation and reportedly got loud approval when he griped about the oh-so-rough treatment he and fellow conservatives allegedly get from the press.

Reuven Frank, former president of NBC News, wrote about that meeting, and other troubling developments, in his column for the New Leader. ''It is daily becoming more obvious that the biggest threat to a free press and the circulation of ideas,'' Frank wrote, ''is the steady absorption of newspapers, television networks and other vehicles of information into enormous corporations that know how to turn knowledge into profit—but are not equally committed to inquiry or debate or to the First Amendment.''

The further to the right media magnates are, the more kindly Congress is likely to regard them. Most dramatic and, indeed, obnoxious case in point: Rupert Murdoch, the fox mogul whom Frank calls ''today's most powerful international media baron.'' The Australian-born Murdoch has consistently received gentle, kid-glove, look-the-other-way treatment from Congress and even the regulatory agencies. When the FCC got brave not long ago and tried to sanction Murdoch for allegedly deceiving the commission about where he got the money to buy six TV stations in 1986, loud voices in Congress cried foul.

These included Reps. Jack Fields (R-Tex.) and Mike Oxley (R-Ohio). Daily Variety's headline for the story: ''GOP Lawmakers Stand by Murdoch.'' They always do. Indeed, Oxley was behind a movement to lift entirely the ban on foreign ownership of U.S. television and radio stations. He wanted that to be part of the House bill, but by some miracle, this is one cockamamie scheme that got quashed.

Murdoch, of course, is the man who wanted to give Gingrich a $4.5 million advance to write a book called ''To Renew America,'' until a public outcry forced the House speaker to turn it down. He is still writing the book for Murdoch's HarperCollins publishing company. The huge advance was announced last winter, not long after Murdoch had paid a very friendly visit to Gingrich on the Hill to whine about his foreign ownership problems, with the FCC.

Everyone knows that America is on the edge of vast uncharted territory where telecommunications is concerned. We've all read about the 500-channel universe and the entry of telephone companies into the cable business and some sort of linking up between home computers and home entertainment centers. In Senate debate on the deregulation bill last week, senators invoked images of the Gold Rush and the Oklahoma land rush in their visions of this future.

But this gold rush is apparently open only to those already rolling in gold, and the land is available only to those who are already big landowners—to a small private club

whose members are all enormously wealthy and well connected and, by and large, politically conservative. It isn't very encouraging. In fact, it's enough to make you think that the future is already over. Ah, well. It was nice while it lasted.

Mr. KERREY. The headline of this article says, ''Fat Cat Broadcast Bonanza.''

I admit that is a useful headline for me to make my point, but listen to the argument here.

Limits on multiple ownership would be eased by the bill, so that any individual owner could control stations serving up to 35 percent of the country . . .

The House, by the way, goes to 50 percent versus the 25 percent now.

There would be no limit on the number of radio stations owned. Cable and phone companies could merge in municipalities with populations up to 50,000.

Broadcast licenses of local TV stations would be extended from a 5-year to a 10-year term and would be even more easily renewed than they are now. It would become nearly impossible for angry civic groups or individuals to challenge the licenses of even the most irresponsible broadcasters.

In addition, the rate controls that were imposed on the cable industry in 1992, and have saved consumers $3 billion in the years since, would be abolished, so that your local cable company could hike those rates right back up again.

Mr. President, I believe that those, like myself, who want a competitive environment in telecommunications, who want to support a bill that moves us from a monopoly at the local level to a competitive environment, who believe that you can get benefits from competition, that consumers, taxpayers, and citizens, will say, Senator, I am glad you voted for that bill. I believe we can get that kind of competition without changing the ownership rules for our broadcasters. I just do not see a compelling reason for it. I do not see, indeed, increased competition. I think an argument can be made, in fact, that it is moving in the wrong direction, much more toward a concentration and less competition, and thus I support the Dorgan amendment before us now.

I yield the floor.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I wish to continue the speech that I began regarding the standard of review in the Justice Department. If other Senators wish to offer amendments—I see that my colleague from Missouri has arrived. If he wishes to speak, I will yield the floor.

Mr. ASHCROFT. Thank you. I would be pleased to speak, but I would like to gather my thoughts.

Mr. PRESSLER. I ask unanimous consent that the speech I am giving will continue at the point I broke off to yield to other Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1265, AS MODIFIED

Mr. PRESSLER. Mr. President, I am speaking about the role of the Department of Justice. The Department of Justice seems to be seeking a regulatory role, which is unnecessary in this bill—a role that the FCC plays. When we table the Dorgan-Thurmond amendment at 12:30, it will be because of some of the problems. I am citing the Ameritech experience, and I cited an article in the New York Times that said that it appears that the Justice Department is determined to win a permanent role in determining when the Bells should win freedom.

Ameritech may have thought that it had no choice but to accept the deal that was offered. But the Department's ability to force its will upon one company does not render the so-called Ameritech plan a model for the industry. Indeed the plan simply highlights that the 1982 AT&T consent decree has broken down. It is time to return regulation of telephone markets to Congress, the FCC, and the States.

The Ameritech plan, which was agreed to about 2 months ago, has been touted as opening markets, both local and long distance, to increased competition. What it is, in fact, is a sketchy proposal for a complete restructuring of how local telephone service is provided and billed. If it is ever implemented, it will bring about a massive shift of power from State and Federal regulators and the decreeing court to the Department of Justice. At the very least, the plan would compel local telephone companies to change to usage-sensitive billing of the kind that Ameritech has already implemented in Chicago. In other words, all residential subscribers would end up paying a flat up-front fee for every local call they make, plus additional measured charges for every minute of local usage. Ameritech has been filing tariffs since 1992 to move in this direction. Those tariffs have been accepted in Illinois but nowhere else.

Most States and most residential consumers will find this repudiation of price-averaging and universal service wholly unacceptable. What the Department hopes to do is to force these other States, against their better judgment, to go along with its sketchy proposal as the price of ensuring that their local telephone companies are able to provide a full range of services. While the plan may or may not be workable in parts of Ameritech's service area, it would upset the fundamental regulatory schemes of most States if applied more broadly, leading to dramatically higher prices for many residential customers.

Moreover, even after implementing the mandates of the Department, Ameritech will not get long distance relief until the Department of Justice, in its discretion, decides it should. Thus, the Department of Justice will become the Federal regulator, State regulator, and judge, all rolled into one.

For some reason, that seems to be what the Department of Justice wants. It wants to take on this regulating role, which is not in its enabling statute. Its enabling statute is that it is supposed to be an enforcer of law. It is no small wonder the Department favors the plan and strongly favors a similar role under the proposed amendment before us today. Yet, it is the Department itself that is the greatest obstacle to progress under the current decree, and the least capable of taking on such regulatory responsibilities. All requests for waivers of the decree must be processed by the Department before they are presented to the district court. The Department has proven completely incapable of performing that function. Delays of 3 to 5 years in the processing of even simple waivers are commonplace. Yet, the Department is now trying for greatly increased powers and vastly expanded responsibilities.

The Department's new plan, in fact, constitutes a repudiation of the basic tests for relief contained in the AT&T consent decree. Instead of simply demonstrating to the court that it cannot impede competition in the market it seeks to enter—which is all the decree requires—Ameritech must first implement a series of changes in its local telephone operations, all of which are outside of the scope of the decree.

This is a betrayal of the bargain reached in 1982.

The Department, in attempting to take on the roles of State public utility commission, FCC, and decree court, is guilty of gross overreaching. It is also playing into the hands of those who hope to kill the legislation and further delay the opening of telecommunications markets to genuine competition.

It also clearly demonstrates that debate over this amendment is not about the appropriate standard for review, but whether any DOJ role is appropriate given the poor track record at Justice.

Now, the proposed order is a blueprint for additional proposed orders. The order that the Department is proposing for Judge Greene's signature is a long, rambling, and almost impenetrable legal document. It is also not self-effectuating.

Even if Judge Greene signed the order today, nothing would happen. Ameritech would not be permitted to enter any interexchange market. There is no deadline for when it comes.

The order demands many further layers of review by the Department and permits the possibility of Bell having long distance at uncertain future dates at two areas that serve 1.2 percent of the population. The order is 39 pages long and contains 50 main paragraphs.

This decree, the Ameritech decree, is twice as long as the consent decree that broke up the old Bell system in 1984. That is a reflection of lawyers at work, I suppose.

The proposed order is being described as one that will permit a Bell company to enter the long distance market. The order contains no such permission. It

does not grant Ameritech the right to provide interexchange services in the temporary waiver territory.

All the order itself achieves is a wholesale transfer of power from Judge Greene to the Department of Justice. If the order is entered, it will be up to the Department in the exercise of its discretion to determine when, if ever, Ameritech will be allowed to provide long distance service in any market.

The order has this effect because key conditions on Ameritech's entry are undefinable, indeed, so vague as to be undefinable, because the order asked the district court simply to let the Department declare when the conditions have been met.

Paragraph 9, for example, states that Ameritech shall not offer interexchange telecommunications pursuant to this order until the Department has approved the offering of such telecommunications pursuant to the standard set forth in paragraph 11.

Paragraph 11, however, simply describes an open-ended process of further review. Among other things, the order empowers the Department to hire experts to review Ameritech's future proposals and declares Ameritech must pay for them. The Department, it appears, expects to spend not only time but significant sums of money in evaluating Ameritech's proposals when they are finally put forward.

The order also allows the Department, in its sole discretion, to condition relief upon any other terms that may be appropriate. When and if some Ameritech plan is ultimately approved and put into effect, the Department retains authority to terminate at will by sending a letter to Ameritech telling them to stop. Ameritech will be permitted to petition Judge Greene for review, a right it already has today.

The proposed order is reflective of nothing so much as the Department's desire to micromanage all aspects of the telecommunications industry.

It seems inconceivable that Judge Greene will approve or could lawfully approve such a wholesale transfer of power from his courtroom to the Department's Assistant Attorney General for antitrust. Under both the standard provisions of district court jurisdiction and express jurisdictional terms, the divestiture decree, the Bell companies are entitled to timely district court review of motions for relief from the line-of-business restrictions.

A district court has a general duty under the Federal rules of civil procedure to entertain motions of parties and rule on them in an orderly and timely fashion. This is clearly a serious and important responsibility, particularly in a case such as this one that has remained under the district court's jurisdiction for 21 years. It is not a duty that can be delegated to anyone else.

I see my friend from Missouri is prepared to speak. I yield the floor.

Mr. ASHCROFT. Mr. President, I rise to oppose the amendment which would place the Department in the process of authorizing the entry by the Bell operating companies into the long distance markets.

Senate bill 652, which was the study result of much activity in committee and a long period of investigation, places the responsibility for making that judgment in the FCC. It is important to understand what the Federal Communication Commission is, how it is composed, why it is the appropriate agency to make those kinds of decisions.

The Federal Communications Commission is a quasi-judicial body not affected by politics. Appointees are appointed for an extended period. There are longer periods of appointments than the President's term is. It is designed to be insulated from politics, to make professional judgments that are technical and appropriate to the field that the Federal Communications Commission oversees, and is technically competent and expert in the area of communications.

The amendment which we are considering now and upon which the Senate of the United States will act at 12:30 today is an amendment which would have the Department come in and second-guess the judgment of the Federal Communications Commission by adding a Department-consent requirement before these companies could move on to compete and extend and enhance the competition in the long-distance market.

I do not believe that kind of layering of the bureaucracies, I do not believe that kind of additional Federal and governmental involvement, would promote competition.

As a matter of fact, that kind of bureaucratic involvement very frequently does the opposite of promoting competition. The more bureaucracy that is involved, frequently the more difficult it is for enterprises to have the kind of flexibility that we really want enterprise to have to be competitive in an international marketplace which demands higher and higher levels of productivity.

Now, the bill as presented to this body by the committee, S. 652, is very clear about the way it expects the decision to be made regarding the entry of these competitors into the long-distance marketplace. As a matter of fact, it says to the FCC that there is a list, a specific recipe of conditions, that have to be met. In addition to the 14 or so conditions that are listed in the bill, there is another interest that is charged to the FCC that they must consider. It is the public interest.

Here what we have in the bill is a governmental body, a quasi-judicial body, the regulatory commission called the FCC, the Federal Communications Commission. The Congress in this body is telling them specifically to make the decision based on these criteria and adds to the 14 criteria the public interest.

Now, that ought to be enough governmental involvement to assure that we make good decisions and the right decisions. However, the amendment which is now being considered would add the Department in a totally new and different and unprecedented role for the Department, one in which they have not been involved before. The Department would be asked to implement a supervisory authority here and to make a final decision about whether these companies could enter the long-distance competitive marketplace.

That final decision is something they have never exercised before. Even under the court orders relating to the divestiture from AT&T of the Bell companies and setting up the Bell operating companies around the country, the regional Bell companies, the Department did not have final authority. The Department went before a judicial decisionmaker and advocated a position.

Now, the Department should not be given a decisionmaking authority in this matter because the decisionmaking authority is given to the FCC. The Department should be given an advisory role just like it has an advisory or advocacy role in the current situation.

One important thing to remember is that Senate bill 652 does, in fact, provide for an advisory role for the Department. The FCC, in making its final determination about whether or not it will release the regional Bell operating companies to participate in the competition of the long-distance markets, the FCC is directed to consult with and to seek the advice of the Justice Department. But, it would be unprecedented for us to move beyond that traditional role of the Justice Department to ask the Justice Department to be making final decisions. Because, as a matter of fact, that has never been its role in any previous situation and should not be its role now. The FCC is that Commission that is a quasi-judicial body that can make those decisions, is trained to make them, is expert in the communications industry, and ought to be the final authority.

So it is pretty clear to me, and I believe it ought to be clear to the U.S. Senate, that the FCC should retain that final authority and that the Department of Justice be maintained in its advisory authority that the bill, S. 652, provides. The amendment which would enhance the advisory authority is unnecessary and would be counterproductive.

The PRESIDING OFFICER. The Senator should be advised that we have controlled debate beginning at the hour of 11:30.

Under the previous order, the hour of 11:30 having arrived, the Senate will now resume consideration of the Dorgan and Thurmond amendments, with 1 hour equally divided prior to a motion to table.

Mr. PRESSLER. Parliamentary inquiry, who controls the time?

The PRESIDING OFFICER. The time is controlled by the two managers of the bill.

Mr. ASHCROFT. Mr. President, I ask unanimous consent for an additional 5 minutes to speak as in morning business.

The PRESIDING OFFICER. Is there objection?

Mr. PRESSLER. Mr. President, I believe under the unanimous-consent agreement I will have to yield 5 minutes off the amendment's time, from what I understand of the parliamentary situation. I am prepared to yield 5 minutes, but I make it clear I will reserve the last 15 minutes for managers of the bill to speak. I believe we should reserve about 15 minutes for Senators DORGAN and THURMOND to speak, if they come to the floor.

So I yield 5 minutes to my friend from Missouri.

Mr. ASHCROFT. In that event, I withdraw my request for unanimous consent to speak as in morning business and ask the Chair to inform me when 5 minutes has expired.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. ASHCROFT. Mr. President, there has been quite a bit of debate on this issue. It has been suggested that those of us who oppose the Department of Justice having a special and unprecedented role of final decisionmaking in this arena do not trust the Department of Justice.

We trust the Department of Justice. But we trust it to maintain its traditional role. We trust it to be a law enforcement agency and an advisor as it relates to legality and propriety of measures that relate to the law. But we do not trust it to do something totally new, something different, nor do we trust it to second-guess an administrative agency that has expertise in this area, the Federal Communications Commission.

So, this is not a question about whether the Department of Justice will have a role. That question was laid to rest long ago. The FCC is required to consult, according to the language of the bill, with the Attorney General regarding the application during the 90-day period. The Attorney General may analyze a Bell operating company's application under any legal standard, including the Clayton Act, the Sherman Act, and other antitrust laws, and those standards of the Clayton Act and the Sherman Act are the kinds of standards that are suggested by the amendment.

The difference between the bill, this bill, and the amendment which is proposed, is whether or not the Justice Department would have final decisionmaking authority. All of its ability to advise and to argue and to participate by virtue of supplying its views are preserved and protected under this bill. But to say the Department of Justice has separate veto authority over the agency of expertise here would be to inject the Department of Justice at a policymaking level never before provided for the Department of Justice, not only in this arena but in other arenas as well.

I just suggest that we do not need to change the character of the Justice Department from an enforcement arena and prosecutorial arena to a policymaking arena. The policy should be judged by the Congress of the United States and the policy is set forth clearly here, in the kind of guidelines that we would seek to suggest for the Federal Communications Commission. This amendment will make a mandate of the advisory role of the Department of Justice, a mandated final decisionmaking role, and it will provide for confusion with two Federal agencies seeking to make final decisions instead of one.

The Federal Communications Commission is a professional, quasi-judicial organization with 5-year terms. The Department of Justice is an appointed position, appointed by the President of the United States. It has all the benefits of political involvement and has the drawbacks of political involvement. I do not believe we want political decisions to be made, the influence or contamination of politics to find their way into this particular set of decisions.

I believe it is important for us to reject this overlapping, doubling up of enforcement at the Federal level, the duplication of decisionmaking. The professional, trained, expert Federal Communications Commission can make this decision with the advice of the Department of Justice. For us to try to have redundant and duplicative Federal control here is for us to reject the promise of the future. Some look into the future and shrink back in fear. I think this is a great opportunity.

In closing, I would say I do not think the competitors of the United States, as they are working on a framework for operations for telecommunications, are going to be thinking about how many layers of regulation they can place on top of this industry. I do not think they are going to think about how much duplicative and redundant control, or whether they are going to convert what had otherwise been law enforcement agencies into policymaking agencies and to have a tug of war between two agencies of the Federal Government which would stymie expansion and development and growth in the industry.

I think our competitors around the world are going to try to seize and regain the advantage that America currently has in telecommunications. For us to add the Department of Justice, not as an adviser—that is already in the bill—but as a final decisionmaker to compete with another agency trained to get this job done would be unwise.

So I urge the rejection of the amendment which would make the Department of Justice a final decisionmaker in this matter.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. HOLLINGS. Mr. President, as I understand it, time is divided between the two managers. I take it on this side we would manage the 30 minutes for the proponents. In no way do I propose this amendment. I hope to kill it. But I yield such time as the Senator wishes.

Mr. KERREY. I appreciate the kindness.

I can read the handwriting on the wall, Mr. President. The majority leader opposes this amendment, the Democratic leader opposes it, the Democratic whip, the Republican whip, the manager of the bill, the Republican chairman, the Democratic ranking member—all oppose this amendment.

So what I find interesting is the hyperbole that gets layered upon the argument against that the Department of Justice is overreaching, that they are incompetent. That is an argument that I just heard the Senator from South Dakota use against the Department to demonstrate that they are incompetent. It takes a long time, 1,500 days I heard from the Senator from South Dakota say.

Let me give my colleagues an example of the reason it takes a long time. Maybe the Senator from South Dakota thinks the Department of Justice should have this waiver. In 1994, Southwestern Bell and three other RBOC's filed a request to vacate the final modified judgment to simply completely eliminate its restrictions without replacing those restrictions with any consumer safeguard, with any requirement such as those contained in S. 652. That was the waiver application. The Senator from South Dakota and the Senator from Missouri talk about all this overreaching regulation. Perhaps they would like to have the Department of Justice approve this waiver, get it out of the way in a hurry.

Is that what the Senator from South Dakota has been arguing for when he talks about delays? Is this the sort of thing he wants them to approve? Let us not come to the floor and talk about 1,500-day delays. It is being delayed because of this kind of thing. Nobody, I do not believe anybody; maybe there is; maybe someone down here says what we should have had was the Department of Justice approving this kind of waiver. Then S. 652 would not be necessary. Maybe that is the feeling here, we do not want any consumer protection. We do not care if there is local competition. Forget the checklist. Forget the VIII(c) test, and all that nonsense. Let these guys go out and have at it, take their monopoly and run with it, and use the power in any fashion they want.

I do not think so. I think the structure of this bill implies that we are concerned about this monopoly power and that we want some restraint as we move to a competitive environment. And the Department of Justice has been attempting to measure that as

they evaluate these waivers. My colleagues will come down and say, ''Oh, no. Another layer of bureaucracy.''

Let us not repeat the mistakes of the past. I call my colleagues' attention to the last major deregulation action in airlines when the Department of Justice again was given a consultative role. They basically had the opportunity to file a brief. They would just as well write their opinion on the wall of a bathroom for all the impact it has.

Now we have in this case the airlines being deregulated. Now comes TWA and a hub in St. Louis wanting to acquire Ozark Airlines. The Department of Transportation gets the application as the FCC would in this case. Now we have Northwest Airlines trying to acquire Republic Airlines in the hub serving Minneapolis. The Department of Justice said: In our opinion, you will get less competition. That is our opinion. That is all the law allows, just an expression of their opinion. They vigorously, in fact, said you are going to get less competition. The Department of Transportation says your opinion is as good as anybody else's. We ignore it. Guess what? There is less competition and higher prices in both of those hubs as a consequence of those actions.

We are not talking about another layer of regulation. The Department of Justice is not asking to intervene and get involved in something about which they know nothing.

We are asking with this amendment, which is obviously going to get defeated—the opponents of this deal are lined up, in effect. We have been working long and hard, and are likely to get 40 votes for this thing. But I will stand here and predict that the Department of Justice is going to issue an opinion on an action taken by a local telephone company that the consumers are going to get less competition, not more. They are going to get less competition. They are going to file an opinion. That opinion will be ignored by the FCC, and Members will be up here saying, ''Gee, that was not quite what we had in mind.''

So we are not asking for increased regulatory authority. Please do not talk about the delays unless you are prepared to identify a specific waiver that you think should be approved. Let us talk about the waiver. I alert my colleagues that we will have an opportunity on additional amendments to revisit this issue.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. PRESSLER. Mr. President, I yield 5 minutes to my friend from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, I thank the managers of the bill, and I also thank the chairman of the full Commerce Committee, who has really done a marvelous job, along with the ranking member and former chairman, Senator HOLLINGS.

We are not newcomers to this issue. I do not doubt for a minute the dedication that the Senator from Nebraska has in modernizing telecommunications, because we have been on panels together and we have been to different places together, and understand in his State, where distance learning and telemedicine is becoming very, very important, and also the new technology and the policy it is going to take to force that new technology into the rural areas. That is where our first love lies. I think the same could be said about South Carolina and the same could be said about South Dakota. But S. 652 already gives the Justice Department a role. It is spelled out clearly.

It says, before making any determination:

> The Commission shall consult the Attorney General regarding the application. In consulting with the Commission, the Attorney General may apply any appropriate standard.

That is the language that is in this bill. Do we start talking about those who have the expertise in regulating or do we talk about an organization that has the expertise in litigating? What is the primary purpose of the Department of Justice? I would say if the administration in their view thinks that some Federal law has been broken, they advise the Department of Justice to look into it. The same with the Congress. That is what the Department of Justice does. They are not in the process of rulemaking. I think that is left to the FCC and, of course, those of us who want to take the responsibility of setting policy where it should be set, here in this body, and not shirk our responsibilities or our duties in order to set that policy.

The Senator from Nebraska says that there should be a larger role. That is what he is advocating. All we have to do is look back at the modified final judgment. How is it being administered today? It is being administered by the court, by Judge Greene, who has done an admirable job? Nobody can criticize Judge Greene. But the U.S. district court retains jurisdiction over those companies that were party to the MFJ. The court then asked the Justice Department, the Antitrust Division, to assume postdecree duties—''post,'' after it is all over, it is asked to do those duties. The antitrust division provides Judge Harold Greene of the district court with the recommendations regarding waivers and other matters regarding the administration of MFJ.

Before we can do anything to deal with new technology, to force those new technologies and those tools out to the American people, yes, there have to be rules of entry. But we do not have to add layer upon layer of bureaucracy. If there is one thing that is being talked about around this town right now, it is the budget and spending. What do we spend our money for? It is my determination, after being here about 6 years, that if there is one thing that absolutely costs the taxpayers more money and the waste of money in Government, it is not that they are not doing a good job. It is called redundancy. Everybody wants to do the same thing. Everybody wants their finger in the same pie. Just look at the Department of the Interior. It is probably the greatest example. Every Department has a wildlife biologist. Wildlife biologists, by the way, are kind of like attorneys. If you get three of them together, you are not going to get an agreement. Everybody has a different approach.

So basically what my position and my opinion is is that this is just another layer, another hoop to jump through before we finally deregulate. We want to be regulatory in nature and not more regulation or redundancy.

Mr. President, I ask that this amendment be defeated. I thank the Chair.

The PRESIDING OFFICER. The Senator from South Dakota has 18 minutes.

Who yields time?

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the time for the proponents be managed by the distinguished Senator from North Dakota and the Senator from South Carolina, Senator THURMOND. They are the proponents.

The PRESIDING OFFICER. The Senator has the right to designate the manager.

Who yields time?

Mr. KERREY. Mr. President, will the Senator from North Dakota yield to me 15 seconds to correct a statement?

Mr. DORGAN. I am happy to yield.

Mr. KERREY. Earlier I said that the opponents of this included the Democratic leader. The Democratic leader is on our side. He is against the law in its current form, and is in support of the Dorgan-Thurmond amendment.

Mr. DORGAN. Mr. President, I yield myself such time as I may consume, and I might say that when Senator THURMOND comes, he will want to be able to speak. So I will speak for 5 minutes.

Mr. PRESSLER. Mr. President, how much time does each side have?

The PRESIDING OFFICER. The Senator from South Dakota has 18½ minutes. The Senator from North Dakota has 23 minutes.

Mr. DORGAN. Mr. President, a lot of statements have been made in this debate about the role of the Justice Department. Many of the statements that were made were surprising to me.

Let us back up just for a moment and ask ourselves who investigated and sued to break up the Bell system monopoly which resulted in the very competition that is extolled here on the floor of the Senate as driving down prices in the long distance market? Who did that? It was the Justice Department that did that. Yet, we are confronted with the debate today that says, ''Gee, the Justice Department is a roadblock. The Justice Department is a problem. We are talking about layers

of bureaucracy and layers of complexity.''

If you stand here and extol the virtues of competition in long distance and talk about the fact there are now over 500 companies from which you can choose to get long distance service and therefore lower prices because there is such robust competition, you must, it seems to me, recognize we got to that point because of the Justice Department. And if you recognize we got there because of the Justice Department, you cannot stand on this amendment and say somehow the Justice Department is a roadblock. I am telling you it is interesting to me to hear people preach about competition but then not be willing to vote for the things that promote the very competition they preach about.

Competition works when you have many competitors in a competitive environment with the price as the mechanism for competition. Competition works in a free market when the market is free. But competition does not work when you have concentrations such that some can begin to control portions of the marketplace.

Now, all we are asking in this amendment that is now a second-degree amendment supported by Senator THURMOND, myself, Senator DEWINE, Senator KERREY, and others, is that the Justice Department have a role to play on the issue of antitrust, on the Clayton 7 standard, and we have delineated the difference between the FCC role and the Justice role.

Next time somebody stands up and says there is overlapping responsibilities, that is nonsense, total nonsense. There is not an overlap here. It is precisely the purpose of this amendment. So it just does not work to claim that this is overlap and complexity. It is not true. It is not the case. But you cannot preach about competition and then indicate that you support taking the agency out of this process that is the agency which evaluates competition and makes sure there is competition in the marketplace. It just does not square with good logic that if you are a friend of the free marketplace you would not support the things that are necessary and important to keep the marketplace free.

I offered an amendment earlier, and I was not benefited by hearing the Senator from Nebraska speak on it. I am sure he says it was wonderful and eloquent, and I am sure that may well have been the case, but I missed it, nonetheless. It is likely he will repeat it, I am sure, so I will probably have the benefit of hearing it in the future. But I offered the amendment on broadcast ownership, and it is exactly the same principle as the issue of the Justice Department. Those who say let us have robust competition in telecommunications and then say, by the way, we are going to eliminate the ownership restrictions—you can go out and buy 85 television stations if you like; it does not matter to us what kind of concentration exists—well, they are no friend of competition. That is not being a friend of the free marketplace.

I am just saying on these amendments, especially this Justice amendment but also, when that is done, the amendment on broadcast ownership, if you really believe—and I do—in the free marketplace, then you have to be a shepherd out here making sure that the marketplace remains free. There are all kinds of natural economic circumstances that move to attempt to impinge on the free marketplace. Concentration, concentration of assets and concentration of ownership is always, I repeat always, a circumstance where you see less competition and a marketplace that is less free. Concentration is, in my judgment, the kind of circumstance that tends to erode free markets and tends to undermine competition. The underlying amendment that we are going to discuss and vote on as the Justice Department amendment is simply an amendment that says when you are evaluating when there is competition in the local exchanges so then that the regional Bell operating companies are free to go compete in long distance, we want the Justice Department to have a role in that evaluation because they are the experts in antitrust. That is the issue here.

Now, one can vote against this amendment, I suppose, and claim, well, this bill is a free market bill that frees the free market forces; it stokes the juices of competition; it is going to be wonderful for the American people; it is nirvana in the future.

It is nonsense. It is all doubletalk if one does not support the basic tenets of keeping the free market free. And one of those basic tenets, in my judgment, is to make sure that the Justice Department has a role in this circumstance.

So I have been involved in these discussions before, as has the Senator from Nebraska, and others in this Chamber about deregulation. ''Deregulation,'' they just chant that. They ought to wear robes and chant it around here—deregulation, deregulation.

So we deregulated airlines. Guess what, we deregulated the airlines. Wonderful. I said it before. If you are from Chicago, God bless you; you sure got the benefits from deregulation. If your cousin lives in Los Angeles, boy, you got a great deal. If you go out of O'Hare and fly to Los Angeles, you get dirt cheap prices. You have all kinds of carriers competing. That is competition. But go to Nebraska and see what you get from deregulation of airline service, or go to North Dakota and see what you get, or go to South Dakota and see what you get from deregulation of the airline service. It is not pretty. You do not have robust competition. You do not have prices, a competitive allocatur here. What you have is less service and higher costs.

And in the airline deregulation, it is interesting; we have, in my judgment, a parallel because in airline deregulation, when we talk about whether airlines should be allowed to merge and whether we should have these concentrations, the issue was should the Department of Transportation allow the merger to happen. And the Department of Justice was asked in a consultative role.

Well, what we see as a result of airline deregulation is that big airlines have gotten much, much bigger. How? They have gotten bigger by buying all of their regional competitors, and the Department of Justice in some of those cases said it is not in the public interest. And the Department of Transportation said tough luck; we are going to allow the merger anyway.

We have experience directly on this point, and if in the rush to deregulation we do not have the kind of care and patience to make certain that the free market is free and that robust competition exists, we will do the consumers of this country no favor, I guarantee you. We will have had a lot of dialog; we will have used a lot of slogans; and we will have waved our hankies around talking about competition and all the wonderful words that have been focus grouped and tested, and so on, but all of them will not be worth a pile of refuse if we do not do the right thing to make sure that competition exists.

You cannot preach competition and then be unwilling to practice it in terms of the safeguards that are necessary to assure that free markets are free, and that is the purpose of this amendment. I hope those who care about real competition and care about real free markets and those who are willing to make sure the guardians of free markets are able to have a role here, I hope they will come and vote yes on the Thurmond-Dorgan second-degree amendment. I understand the motion will be to table, so I guess in that case I will hope that they will come and oppose the motion to table so that we can pass our amendment.

Mr. President, I reserve the remainder of the time, and I understand Senator THURMOND will wish to access some of the time when he arrives in the Chamber.

The PRESIDING OFFICER. Who yields time?

Mr. PRESSLER. Mr. President, I ask unanimous consent that, notwithstanding the previous order, at 12:30 I be recognized to make a motion to table the Thurmond amendment 1265, as modified and, if the amendment is tabled, amendment 1264 be automatically withdrawn.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Mr. President, reserving the right to object, I did not understand the last portion of the unanimous consent request.

Mr. PRESSLER. Amendment 1264 be automatically withdrawn. That will be the Senator's underlying amendment.

Mr. DORGAN. The Senator is talking about if the motion to table prevails.

Mr. PRESSLER. That is correct. I ask unanimous consent that notwithstanding the previous order, at 12:30 I be recognized to make a motion to table the Thurmond amendment, as modified and, if the amendment is tabled, amendment 1264 be automatically withdrawn.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, this has been a long debate and many speakers have come to the floor on each side. I strongly believe that we should vote to table the Thurmond amendment because it creates a new role, an unprecedented, unnecessary role for the Department of Justice.

Presently, there are many safeguards to consumers and to companies and to the public built into this legislation. This legislation was the result of meeting after meeting for over 3 months, every night and Saturday and Sunday among Republicans and Democrats, to come together to reach a bipartisan bill. We came up with a plan that the regulatory agency, the FCC, would be the decisionmaker while the Justice Department would still be involved.

In the first step, when a company is applying, the State certifies compliance with a market-opening requirement. So that is a safeguard. Second, the FCC affirms public interest, necessity, and convenience.

We had a vote here the other day on this floor preserving public interest, so the FCC can use the public interest standard.

Third of all, the FCC certifies compliance with a 14-point checklist. I have the 14 points listed here in another chart. The point is that in the bipartisan meetings and building on the legislation of last year and building on efforts of many Senators—indeed, all 100 Senators were consulted during this process leading up to the markup in the Senate Commerce Committee—there was a question: Shall we use the VIII(c) test, which is a complicated test, or shall we use the Clayton 7 test, and we decided to come up with a checklist, a competitive checklist.

Mr. DORGAN. Mr. President, will the Senator from South Dakota yield for one quick moment?

Mr. PRESSLER. Yes.

Mr. DORGAN. I shall not interrupt at length. I did want to point out the Senator from South Dakota is correct, an enormous amount of work went into the construct of the compromise. It is also true, is it not, that the Commerce Committee held this legislation up? The intent was to want to move this along quickly, and many of us were cooperative with that. But we at the committee hearing indicated that we were uncomfortable with several of these provisions and intended to deal with them on the floor of the Senate. So these issues, many of them, were raised in the markup of the Commerce Committee and only with the cooperation of Members who decided to raise the issues on the floor rather than in the committee was the bill able to be brought to the floor.

(Mr. ASHCROFT assumed the Chair.)

Mr. PRESSLER. That is correct. I welcome amendments. I welcome this amendment. I am giving a history of how we came to this checklist. I think the point I am making is that we have had a very bipartisan effort here, and we welcomed amendments there in the committee, and we welcome amendments here. Obviously, every member of every committee can bring something to the floor. But this checklist was worked out an a bipartisan basis. Before the local Bell company can be declared as having an open market, it has to interconnect. That is the first point. That is, they have to open up their wires so others can come in. They have to show the capability to exchange telecommunications between Bell customers and competitor's customers, access to poles, ducts, conduits and rights-of-way; the three unbundling standards, where they have to unbundle the system so other people can get in; access to 911 and enhanced 911; directory assistance and operator call completion services; white pages directory listing; access to telephone number assignment; access to data bases and network signaling; number portability; local dialing parity; reciprocal compensation, and the resale rules.

That is a checklist that the FCC must go through to determine if the Bell company has opened up its business so other competitors have a fair opportunity to compete in the local telephone business. I have not heard anyone criticize this checklist. It seems to be universally accepted. Also, the Bells have additional requirements on them to open their markets. This is done at the FCC level and not Justice, and the Bells must comply with a separate subsidiary requirement, nondiscrimination requirement and a cross-subsidization ban. The FCC must allow the Department of Justice full participation in all of its proceedings. So the Department of Justice is already present without the Thurmond amendment.

Now, the Bells must comply with existing FCC rules and rigorous annual audits, elaborate cost accounting, computer-assisted reporting, and special pricing rules. So there is much involvement. The Sherman Antitrust Act is in place. The Clayton Act is in place. The Hart-Scott-Rodino Act is in place. So the Justice Department has plenty to do. I find this debate very unusual because it implies we are going to get the Justice Department involved. They are involved at every stage. In addition, under the Hobbs Civil Appeals Act, the Department of Justice is involved as an independent party in all FCC appeals.

The Justice Department is involved every step of the way. If there is disagreement and there is an appeal, the Justice Department can be a party to that.

Mr. President, the Justice Department is meant to be, under its enabling legislation, an enforcer of law. It is trying to become a Government regulation agency. Now, it did become that to some extent under Judge Greene's 1982 order. That order arose because Congress failed to act. Congress failed to do what we are trying to do now. Congress failed to require that the local exchanges be opened up, as the checklist requires. But we are doing that now in this legislation. We are finally doing it. Meanwhile the Department of Justice is very much intent, it seems, upon becoming a regulatory agency.

I have pointed out the length of time it takes the Department of Justice to get these things done. Judge Greene suggested 30 days. They are up to almost 3 years. I know they have given this excuse or that excuse, but the point is that Judge Greene thought it could be done in 30 days, originally, in 1982. A bureaucracy such as that will take a long time to produce a piece of paper. That will slow down the process and hurt consumers.

It is my feeling that if we can pass this bill in a deregulatory fashion, it will cause an explosion of new investment in activities and devices. I frequently have compared it to the Oklahoma Land Rush—if we can pass it. Right now, our companies are investing overseas, and they are not investing here.

People are trying to say this is anticonsumer. That is nonsense. Look at what happened when competition opened up the market for cellular phones. The price has dropped. Look at what happened when we deregulated natural gas. Prices have dropped. It is my opinion that a long distance call should cost only a few cents. It is my opinion that cable television rates should drop when there is more competition from DBS and video dial tone. If we get yet another regulatory agency involved, we can delay this thing 2 or 3 years. In fact, based on the Justice Department's performance, it will delay this whole operation for 2 to 3 years before we have competition and deregulation.

This is a deregulatory, procompetitive bill. We are trying to put everybody into everybody else's business. Mr. President, there has been a lot of talk about corporate activity on these bills. There is an implication that the Commerce Committee bill has a lot of corporate input. But I say to you, read the newspapers of the last 3 weeks, and you will see all those full-page ads. They are paid for by corporations, and I admire them. They are fine corporations, members of the so-called Competitive Long Distance Coalition, which is headed by a person whom I respect very much, a former leader of this body, with whom I disagree on this matter. A vast amount of the corporate advertising in the last month has been

by corporations opposed to my position. I point that out because there seems to be some suggestion that S. 652 simply represents corporate thinking. Well, all the ads I have seen in the papers—the full-page ads—have been run by corporations that oppose my position and want the extra Justice Department role. That is because some corporations want to use Government regulation against competition. That is what is going on here.

I think that we should defeat the Thurmond amendment because it is, as my colleague from South Carolina said, not only the camel's nose under the tent, it is the whole camel under the tent, so-to-speak, because once the Justice Department gets in, they will try to expand their regulatory role, as in the Ameritech case. I cited specifically the regulatory approach they have taken in that case. They want to have people over there writing telephone books—literally writing telephone books. They are supposed to be lawyers enforcing the antitrust laws in the Justice Department.

So I hope that we defeat this amendment. I reserve the remainder of my time.

Mr. THURMOND addressed the Chair.

Mr. THURMOND. Mr. President, how much time do the proponents have?

The PRESIDING OFFICER. The Senator from South Carolina has 13 minutes 10 seconds.

Mr. THURMOND. I yield 5 minutes to the distinguished Senator from Ohio, Senator DEWINE.

Mr. DEWINE. Mr. President, it has been argued on this floor time and time again that, under this bill, the Department of Justice could still enforce the antitrust laws. That is true. That is technically true.

But the facts are that under the bill, the Department could still enforce the antitrust laws after—after—the phone companies move into the new markets.

That is the problem. That is exactly the problem. It is like, Mr. President, enforcing the law after the fox has been allowed to guard the chicken coop. At that point, the damage is done. The fox has already eaten the chickens. We can stop the fox, but we cannot get the chickens back. It is too late.

In this particular case, we would be enforcing the law after competition has been driven out, after choices have been eliminated. So while the argument is technically true, it certainly falls short and does not disclose the full story.

Mr. President, we should enforce the law and ensure competition before competition is driven out.

I rise today, Mr. President, in support of the Thurmond second-degree amendment. The goal of the bill we are considering today is to promote competition in the telecommunications industry. The Thurmond amendment is an attempt to make sure that we use the most effective means toward this end.

Mr. President, the American people know when we have competition two good things happen: consumers have more choice, prices go down. This is as true in telecommunications as in any other sector of the economy.

What we are really debating today is how best to make competition take root in the telecommunications industry. The question is, what agency is best equipped to undertake the task of policing competition in these markets?

It is my belief, Mr. President, that the Thurmond amendment offers the most logical answer to that question.

Under this amendment, two agencies of Government play a role. Each of the agencies is to play an important role, a role for which it is extremely well suited and in which it has a great deal of relevant expertise. The Federal Communications Commission sets communications policy. That is what the FCC does best. That is what they know how to do.

Under the Thurmond amendment, that is what they will be doing. The Antitrust Division of the U.S. Department of Justice enforces competition. That is what the Justice Department does. That is what they will do under the Thurmond amendment. The Thurmond amendment makes the best possible use of each of these agencies. We do not need the FCC to hire a new staff of antitrust lawyers, a new layer of bureaucracy, to do something the Justice Department is already equipped to do. We need to liberate the FCC to do what it does best. That is what the Thurmond amendment does.

Equally important, Mr. President, in my opinion, is what the Thurmond amendment does not do. It does not duplicate functions of Government. It is emphatically not a question of simply adding the Justice Department on top of the FCC. The FCC has a role. The Justice Department, under the Thurmond amendment, has another distinctive, different role, not duplicating.

The system envisioned under the Thurmond amendment, Mr. President, will not cause delays in the licensing process. We have heard that time and time again. From the moment an application is made under the Thurmond amendment, both the FCC and the Justice Department will have exactly 90 days, according to law, to make their ruling. These 90-day periods will run concurrently, not sequentially.

The Department has experience in this area. They do it for a period of time. The Clayton Act sets a 30-day limit. They hit that timeframe. Under this amendment, no layering of bureaucracies, no delays, just an intelligent division of labor in U.S. telecommunications policy.

In conclusion, Mr. President, that is what the Thurmond amendment will accomplish. I thank the Senator from South Carolina for his bold leadership in this area with this specific amendment. I urge the adoption of the amendment.

Mr. WELLSTONE. Mr. President, I wish to speak today in support of the Dorgan amendment, an amendment, I firmly believe, that is so key for the protection of consumers that frankly I must wonder how this bill got out of committee without its inclusion.

Now Mr. President, on the substance of the amendment, I could do no better than to defer to the comments already made on this issue by my two colleagues, the distinguished Senators from Nebraska and North Dakota, both of whom demonstrate a penetrating understanding of this very difficult topic. I would, however, like to take a moment to address this amendment from a perspective we've only occasionally heard in the debate on this bill—that of telephone and cable-TV rate-payers, both in my State of Minnesota and across this Nation.

I would hazard a guess that all of my colleagues would join with me in supporting the stated goal of this legislation: increasing competition in local phone service as well as cable TV. All of us likely agree that if competition is allowed to flourish, the biggest winners will be the consumers, the ratepayers, the millions of citizens who power the entire industry.

But, and here's where some of my colleagues and I part company, not all of us are ready simply to throw our trust to the companies that stand to profit from deregulation. Competition doesn't just happen, sometimes it must be nurtured to protect consumers against monopoly control. The Dorgan amendment, by providing a role for the Department of Justice, recognizes this economic fact: this amendment is nothing more than a circuit breaker which will trip only if—let me repeat, only if—it is found that it would not be in the consumer's interest for a local phone company to begin to expand its service. That's all that it is.

Mr. President, the need for the continuation of consumer protections and antitrust circuit breakers is clear. With every passing day, we see more integration in the telecommunications and information marketplace. On Sunday, Mr. President, we saw the Lotus Corp. agree to a friendly takeover by IBM. AT&T and McCaw Cellular will be joining forces, as will other companies, in preparing for this newly de-regulated telecommunications environment.

This integration at the top corporate level and the market position of many of these companies demands that consumers be given a voice—a trusted voice—to speak for them in the coming years. No more trusted voice could be found on this subject than that of the Department of Justice. It was through that Department's courageous leadership that the old AT&T Ma Bell monopoly of old was broken apart—it was a long, tough fight, but this experience gained by the DOJ has been invaluable in guiding the breakup of the Bell system, and the development of competition in long distance and other services. It only makes sense that we allow the DOJ to put this experience to use

again as we move into an exciting, but potentially risky, new market.

The Dorgan amendment, as modified by the Thurmond second-degree amendment, prescribes how this experience will be put to use. The amendment uses the expertise of both the FCC and the DOJ to their best advantage. Under the amendment, the FCC will conduct a more focused public interest test to review whether the Bell companies face competition and adequately meet the checklist of services called for in this bill—topics the FCC is well accustomed to dealing with. The DOJ will conduct an analysis to ensure that a monopoly will not be created—again, a task that the DOJ is particularly qualified for. In this way, responsibilities are clarified and redundancies between the FCC and the DOJ are elminated, and the consumer is protected.

Now for those who say this is a partisan issue, or those who would charge that such protections are no longer needed, Mr. President I turn to the comments of Judge Robert Bork, a distinguished jurist and conservative commentator of the highest regard. Mr. President, Judge Bork writes:

> These restrictions [on the Bell companies] are still supported by antitrust law and economic theory and should be retained. The Bell companies' argument is that the decree's line-of-business restrictions are relics of the 1970's, the industry has changed dramatically, and the restrictions are the product of outmoded thinking. To the contrary, the basic facts of the industry that required the decree in the first place, basically the monopolies of local service held by the Bell companies, have not changed at all.

Without this amendment, Mr. President, this bill asks the Senate to announce the equivalent of unilateral disarmament—the disarmament of the consumer. As it stands right now, this bill says: Mr. and Ms. Consumer, you should give up the rate protections you've had over the years, you should give up any Department of Justice role in this process, you should give up the years of antitrust experience built by those who slew the multitentacled AT&T monopoly in the first place. And what are we going to replace them with? The promise made to consumers by all these unregulated, multinational, multibillion-dollar corporations, that they will do what's in your best interest. A promise that the monopolies of old will behave. A promise that consumers will be protected, that service will be good and that rates will be reasonable.

Mr. President, I don't buy it. Without this amendment, the public will be stripped of one of the key consumer protections they will ever have in the coming years—the voice of the Department of Justice.

Mr. FEINGOLD. Mr. President, I rise in support of the amendment offered by Senators THURMOND and DORGAN. I applaud them for their leadership in the effort to provide the Department of Justice with a strong decisionmaking role in the approval of regional bell operating company entry into long-distance telephony.

The importance of this amendment is underscored by the fact that S. 652 terminates the modified final judgment which settled an antitrust case against AT&T. The MFJ provided a framework by which the regional bell operating companies could enter alternative lines of business. The Department of Justice has had an integral role in protecting consumers by applying the 8(c) test to the RBOC application for a waiver to enter into restricted lines of business. The Department of Justice has ensured that the RBOC's could not use their monopoly power to impinge upon the competition that has developed in long distance. However, S. 652 vitiates the MFJ without providing any substantial safeguards for consumers.

Had it not been for the antitrust efforts of the Department of Justice, which have been consistent through both Republican and Democratic administrations over the last 25 years, we would not have the competitive environment which exists today in long distance. DOJ has been the watchdog for consumers in telecommunications and that is because antitrust laws are intended to be pro-competition and pro-consumer. I urge my colleagues to keep in mind that antitrust laws exist not for the benefit of the competitors but for the benefits which true competition yields to consumers.

Now, as Congress is working toward deregulating telecommunications markets we must keep in mind that true competition will not prevail if one group of players hold all the cards. The power of the local monopoly is without equal in telecommunications markets. The advantages provided to them over those with lesser market power, fewer resources, and limited opportunities to control entry by their competitors are without bounds. As we speak of competition, we must keep in mind that competition cannot exist in markets in which one player has a substantially better hand than his rivals—particularly when those trump cards have been provided by the Federal Government in the form of regulated monopolies.

The Department of Justice is the proper agency to make sure that the deck is not stacked against those attempting to compete fairly in the markets—that is to be sure that RBOC entry into long distance will not substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the country. This test, as contained in section 7 of the Clayton Act, is one that has withstood the test of 80 years of antitrust law. While it is not as strong as the test currently used by the Department of Justice which I would have preferred, known as the 8(c) test, it is a sound test to determine the appropriateness of RBOC entry into long distance.

Mr. President, this compromise amendment offered by my colleagues addresses many of the concerns which have been raised by the opponents of a decisionmaking role for the Department of Justice. First, by requiring the Department of Justice to complete their review and make their recommendation in 90 days from receipt of the application, the RBOC's will be assured of an expeditious review of their request. That should alleviate the concerns of those who fear that DOJ will drag their feet and impede the advancement of competitive telecommunications markets. It will also provide the RBOC's with an incentive not to submit overly broad applications that would not likely be approved.

Second, by narrowing slightly the breadth of the public interest test to be conducted by the Federal Communications Commission, the amendment offered by Senators THURMOND and DORGAN should also assuage the concerns of the RBOC's who claim that a Department of Justice would only duplicate the efforts of FCC.

Mr. President, I also reject the notion that the Department of Justice should only become involved after the damage has been done. Some contend that the appropriate role of the Department of Justice is only to take antitrust actions against those engaging in anticompetitive behavior. That is, we should have more litigation tying up the resources of our Federal courts. I find that argument astonishing in a year in which so many of my colleagues are seeking legislation which attempt to reduce unnecessary litigation. Mr. President, if litigation resulting from inadequate preventative measures is not unnecessary litigation I don't know what types of lawsuits might be categorized unnecessary.

Mr. President, I continue to support the initial amendment offered by my colleagues from North Dakota which would have used a stronger test to ensure there is no possibility that a monopolists could use its power to impede competition in the market it seeks to enter. However, the compromise they have presented is a far more appealing than S. 652 in its current form which reverse the progress we have made toward greater competition in long distance over the last 25 years. The amendment before us employs a time-tested standard from the Clayton Act which should ensure that consumers are protected while RBOC's receive the expeditious review they seek without unnecessary duplication of the functions of the FCC.

I ask unanimous consent that a letter from the Wisconsin's attorney general, James Doyle, supporting a decisionmaking role for the Department of Justice be printed in the RECORD.

Mr. President, this is a sound compromise and I urge my colleagues to support it.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

STATE OF WISCONSIN,
DEPARTMENT OF JUSTICE,
Madison, WI, May 3, 1995.

Hon. RUSSELL D. FEINGOLD,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINGOLD: I understand that the antitrust subcommittee of the Senate Judiciary Committee today is considering S. 652, Senator Pressler's bill that would lift the court-ordered restrictions that are currently in place on the Regional Bell Operating Companies, allowing RBOC's to enter the fields of long distance services and equipment manufacturing at such time as sufficient local competition exists in their service areas.

Several antitrust issues loom large in S. 652. For one thing, despite (or, perhaps, because of) its unmatched skill and expertise in evaluating competition in the telecommunications field, the U.S. Department of Justice is given no role whatsoever under S. 652 in assessing in advance whether local competition exists in each region of the country sufficient to, in turn, give the go ahead to the relevant RBOC to enter the markets for long distance services and equipment manufacturing. Moreover, the Pressler bill repeals the current restriction on cross-ownership of cable and telephone companies in the same service area by permitting telephone companies to buy out local cable companies, their most likely competitor, thereby allowing movement to a ''one-wire world'' with only antitrust litigation to prevent it. In addition, the bill would preempt states from ordering 1+ intraLATA dialing parity until such time as an RBOC was permitted to enter the interLATA long distance market.

I am not alone in strongly opposing these features of the bill. For example, a letter dated April 5, 1995, from Congressman Henry Hyde, Chairman of the House Judiciary Committee, to Congressman Thomas Bliley, Jr., chairman of the House Committee on Commerce, stresses the need for a strong role for the Antitrust Division of the U.S. Department of Justice in any telecommunications legislation:

''[L]egislation directed at changing or replacing an antitrust consent decree, needs to encompass an antitrust law, competition perspective as well as a communications law, regulatory perspective.

''[T]here will * * * have to be an evaluation of marketplace conditions on a case-by-case basis. That is, the actual and potential state of competition—in individual states, metropolitan areas and rural areas—will have to be analyzed.

''Using relevant factors as an administrative checklist [as proposed in S. 652] makes sense, but the key will be the decision-making mechanism regarding whether these conditions are actually present in a particular case. This review should be undertaken simultaneously by both the Justice Department and FCC, with DOJ applying an antitrust standard and FCC applying a communications law test. The statute should contain firm deadlines for review by both agencies.

''DOJ is far less likely to challenge Bell entry if they are involved in the decision-making process leading up to Bell entry.''

Significantly, on April 3, Ameritech, the U.S. Department of Justice, AT&T, MCI and the Consumer's Union announced that they had all agreed (subject, of course, to approval by Judge Greene) to a waiver of the Modified Final Judgment allowing two Ameritech local service areas—Chicago, Illinois, and Grand Rapids, Michigan, to be used as ''test sites.'' At such time as the U.S. Department of Justice determines that actual competition exists in those areas, Ameritech may then enter the market for long distance services originating from those areas. Significantly, both of these developments—the Hyde letter and the Ameritech agreement—occurred in the few days immediately following the Senate Commerce Committee's March 31 action on S. 652.

The April 3 agreement demonstrates that the most forward-thinking of the RBOC's, Ameritech (branded a ''traitor'' by its fellow RBOC's, all adamantly opposed to a ''gate keeper'' role for the U.S. Department of Justice), appreciates the importance of a meaningful U.S. Department of Justice role in the decision-making process leading to the opening of new telecommunications markets.

In my opinion, S. 652 is flawed in certain other respects, not relating to competition law, and I will comment on those features of the bill in due course. Because, however, S. 652 is before your antitrust subcommittee today, I wish to be on record as opposing those features of the bill that offend sound antitrust principles: the elimination of any decision-making role for the U.S. Department of Justice; the repeal of the prohibition against mergers of telephone companies and cable television companies located in the same service areas, and preemption of the state's ability to order 1+ intraLATA dialing party in appropriate cases.

It is critical that federal law ensure a competitive environment in telecommunications for the good of the public. Responsibility for making determinations of sufficient competition should remain in the hands of the Antitrust Division of the U.S. Department of Justice.

Sincerely,

JAMES E. DOYLE,
Attorney General.

Mr. CRAIG. Mr. President, at a time when we are trying to address the deregulation of the telecommunications industry, to further enhance the role of the Department of Justice would be counterproductive.

The Federal Communications Commission [FCC] regulates the communications industry. The Department of Justice [DOJ] enforces antitrust laws.

The pending legislation, S. 652, supersedes the provisions of modification of final judgment [MFJ], that govern Bell Co. entry into businesses now prohibited to them. Once legislation is signed into law, a continued DOJ role in telecommunications policy is no longer necessary except in the area of enforcing the law.

The Department of Justice does not need an ongoing regulatory role as part of an update of our Nation's communications policy. Actual regulatory oversight is not what DOJ is equipped to provide.

DOJ's claim that ''it alone among government agencies understands marketplace issues as opposed to regulatory issues,'' is inaccurate. The FCC has a long history of reviewing and analyzing communications markets. Besides, S. 652 already gives the Justice Department a role which is clearly defined in the language of the bill.

S. 652 states that:

Before making any determination, the Commission shall consult with the Attorney General regarding the application. In consulting with the Commission, the Attorney General may apply any appropriate standard.

Dual DOJ and FCC bureaucracies to regulate the communications industry delays the benefits competition brings consumers. if we are going to strengthen the role of DOJ, why even bother trying to reform the 1934 act? After all, one of the main purposes for passing telecommunications reform legislation is to establish a national policy so that the MFJ can be phased out.

Mr. President, providing this authority to the Justice Department is unprecedented. The Antitrust Division of the Justice Department has never had decision-making authority over regulated industries—or any industry. In addition, assigning a decision-making role to the Department of Justice establishes a dangerous precedent that could be expanded to other industries.

Mr. President, more regulation is not what this bill needs. Again, dual roles for the DOJ and FCC will only delay competition. It will only delay the benefits of competition such as: Lower prices, new services, and more choice for communications services and new jobs. The only jobs that this amendment will provide is new jobs for lawyers at the Department of Justice.

For those who may consider this necessary, let's briefly take a look at the job the DOJ has done in administering the MFJ. It is important to note that the Antitrust Division at Justice does not currently have decision-making authority over the MFJ. That sole authority is held in the U.S. District Court, in the person of Judge Harold Greene. The Antitrust Division essentially serves to staff Judge Greene on the MFJ, providing him with recommendations on waivers and other matters under the administration of the MFJ.

In 1984, the average age of waiver requests pending at year end was a little under 2 months. By the end of 1993, the average age of pending waivers had grown to 3 years. Delays such as these are simply inconsistent with an evolving competitive market.

In addition, the Justice Department is responsible for conducting reviews every 3 years, known as the triennial review, at which recommendations to the court are made regarding the continued need for restrictions implemented under the MFJ.

These reviews were to provide the parties to the MFJ a benchmark by which they could gain relief.

Mr. President, since 1982, only one triennial review has been conducted.

In short, Mr. President, the Department of Justice's track record in fulfilling its obligations under the MFJ is poor. Therefore, I would question the advisability of giving the DOJ an unprecedented role, above and beyond what they currently have under the MFJ.

Mr. President, S. 652 contains clear congressional policy. There is no reason why two Federal entities should have independent authority over determining whether that policy has been met. Again, let us not lose sight of what we are trying to achieve here.

The ultimate goal of reforming the 1934 act should be to establish a national policy framework that will accelerate the private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, which will create jobs, increase productivity, and provide better services at a lower cost to consumers.

Mr. THURMOND. Mr. President, I yield myself such time as may be required.

Mr. President, I rise today in opposition to the motion to table the Thurmond-D'Amato-DeWine-Inhofe second degree amendment.

Many things have been stated in this Chamber over the last several days about my amendment to protect competition and consumers by providing that antitrust principles will be applied by the Department of Justice in determining when Bell operating companies should be allowed to enter long distance. Now that we are about to vote on a motion to table, it is my belief that we must focus on just three basic points in deciding how to proceed on this pivotal issue.

First, the opponents of my amendment assert that I am trying to add a second agency into the antitrust analysis of Bell entry. In fact, just the opposite is true—my amendment removes an agency. S. 652 currently provides that the FCC shall determine the public interest in consultation with the Justice Department. FCC consideration of the public interest requires antitrust analysis, as indicated by the courts and reiterated by FCC Chairman Hundt in testimony last month before the Congress.

As drafted, therefore, S. 652 already requires antitrust analysis by both the FCC and Department of Justice. My amendment will reduce this redundancy, by prohibiting the FCC from conducting an antitrust analysis when determining the public interest. Instead, the antitrust analysis will be conducted exclusively by the Department of Justice, the antitrust agency with great expertise and specialization in analyzing competition.

Second, the antitrust role of the Justice Department in analyzing entry under my amendment is in no way unusual or inappropriate. It is the same analysis that the Justice Department conducts routinely in determining whether companies should be able to proceed into new lines of business through mergers and acquisitions. Even the standard—section 7 of the Clayton Act—is identical. Considering whether entry will ''substantially reduce competition'' prior to any harm occurring is equally important here as in other section 7 cases involving a merger or acquisition. This process protects competition and the American public from harm which can be avoided.

Mr. President, we all strongly support competition. The question we are resolving today is whether we will continue to rely on antitrust law administered by the expert agency to protect competition, as we have since the early part of this century. I fear that failure to support my amendment will harm competition, which ultimately harms our constituents.

These issues are critically important, and I believe that it is highly desirable to have an up or down vote on my modified second degree amendment. For all of these reasons, I urge my colleagues to vote against the motion to table.

I reserve the remainder of my time.

How much time is remaining?

The PRESIDING OFFICER. The Senator has 4 minutes 10 seconds remaining.

Mr. PRESSLER. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from South Dakota has 6 minutes 32 seconds.

Mr. PRESSLER. I yield 3 minutes to the Senator from Texas.

Mrs. HUTCHISON. Thank you, Mr. President. I appreciate so much the Senator from South Carolina. I hate to differ with him, but on this issue I do.

The reason is because I sat on the committee and I saw how difficult it was to get to the goal of deregulation and to try to take the harassment off the businesses that we are trying to encourage to come into the marketplace rather than add yet another hurdle that they must jump before they can get into the marketplace to provide the competition that gives the consumers the best choices for the lowest prices.

This amendment is a gutting amendment. That is why I think it is so important that we stick with the FCC and not add one more layer of the Department. We have made the decision that the FCC is the one that must protect the diversity of voices in the market. We have said the FCC can be the one that knows when there is competition at the local level so that we can go into long distance. It is that agency that has the expertise, that we have given the expertise. There is no reason to come in and add another layer.

Antitrust will be taken care of if we increase competition. That is what this amendment will stop from happening.

The committee labored not hours, not days, not weeks; the committee has labored for years to try to level the playing field among all the competitors that want to be in the telecommunications business. What we have found are some very strong competitive companies that want to jump into local service, to long distance service.

We are trying to create that level playing field. We are trying to take the regulators out of the process so that our companies can compete and give consumers the best prices and the best service.

If we stick with the committee, that is what we will have: more competition, easier to get into the competition. We will not put up more hurdles in the process. This is a deregulation bill, not a reregulation bill.

That is why it is very important for my colleagues, as they look at these choices, to know that the committee has done the work, the committee has worked for years to try to create this level playing field.

I have voted for the long distance companies in some instances. I have voted for the Bells in some instances, to try to make sure that that balance is there.

The committee has struck the balance. I thank the Senators who have worked so hard, the distinguished chairman of the committee, the distinguished ranking member. On this one, I think we must stick with the committee that has done so much work.

Thank you, Mr. President.

Mr. THURMOND. Mr. President, I yield 3 minutes to the distinguished Senator from Nebraska.

Mr. KERREY. Mr. President, the choice before Members on the tabling motion will be: Trust the 14-point checklist, basically, that the committee has offered as an indication; or do we want, in a parallel process, the Department to make a determination as to whether or not competition exists at the local level. That is all we are discussing and debating. I believe we want the Department of Justice to make that determination. I do not have the confidence in the 14-point checklist that others do. It is as simple as that.

Many of the statements that have been made about what this amendment attempts to do have simply not been true. Many of the statements that have been made about what the Department of Justice is trying to accomplish here simply are not true. We are simply saying, with this amendment, to Members of Congress, the Department of Justice should have a determination role. They should say, ''We have determined that there is competition,'' or ''We have determined that there is not competition.''

I will cite, in a repetitive example, two instances that ought to give, I think, Members of Congress a pause. The Senator from South Dakota gets up and says all these delays occur. I cited an application for a waiver of the MFJ that was made in 1994 by Southwestern Bell. I ask the Senator from South Dakota, did he wish that would have been approved in 30 days? That waiver application would strike all the MFJ requirements, strike all the restrictions with no determination of local competition whatsoever. Perhaps the Senator from South Dakota does not like that delay. Perhaps the Senator from South Dakota and other Members would like to have a situation where there is no determination being made by the Department of Justice. If that is the case, vote to table.

But if you want the Department of Justice to have the determination role rather than just ''Here is our opinion about this proposal,'' then you have to vote for this amendment.

I believe if you do vote for this amendment, you will be happy you did. At the end of the day you do not want to just try to make sure these folks are happy who are outside the hallway out here, adding up votes trying to figure whether this amendment is going to pass or fail. You want the consumers and the citizens and the taxpayers and the voters of your State to be happy. And the only way they are going to be happy, the only way they are going to say this thing works, is if we get real competition at the local level. With real competition at the local level, there will be choice and there will be decreases in price and increases in quality. And that is the only way in my judgment that S. 652 is going to produce the benefits that have been promised.

Mr. PRESSLER. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from South Dakota controls 3½ minutes.

Mr. PRESSLER. Mr. President, I yield myself 2½ minutes. I yield the last minute to the Senator from Alaska.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. I conclude this by saying I love my colleague from South Carolina, Senator THURMOND. This appears to be a difference over jurisdiction. I plead with my colleagues, do vote this amendment down. It is a gutting amendment. It will add more bureaucracy. It goes against the procompetitive, deregulatory nature of the bill.

I respect my colleague from South Carolina so much, but I see this as a jurisdictional difference. On this occasion I will have to vote to table the Thurmond amendment and continue to love the senior Senator from South Carolina.

I yield to the Senator from Alaska for the last word.

Mr. STEVENS. Mr. President, I believe this is a balanced bill we have here now. The Department of Justice has a statutory consultative role. If it has concerns, the FCC will hear those concerns. The basic thing about this bill is it gets the telecommunications policy out of the courts and out of the Department of Justice and back to the FCC to one area. We hope to transition sometime so we do not even have them involved.

I oppose striking the public interest section because it upsets the balance we have worked out. It upsets the balance in favor of the wrong parties.

I urge support of this motion of the chairman to table.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, how much time remains?

The PRESIDING OFFICER. The proponents of the amendment have a minute and 35 seconds. The opponents of the amendment have a minute and 58 seconds.

Mr. THURMOND. I will use 30 seconds. The Senator can take the rest.

Mr. DORGAN. Mr. President, if I might take just 1 minute and ask unanimous consent Senator FEINGOLD be added as a cosponsor to the Thurmond-Dorgan second-degree amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, let me again say, those who say this upsets the balance, this adds layers of bureaucracy, this adds complexity—in my judgment, respectful judgment, they are just wrong. They are just wrong.

This does not have balance unless it has balance in the public interest on behalf of the American consumer making certain the free market is free. Free market and competition are wonderful to talk about but you have to be stewards, it seems to me, to make sure the free market is free. The only way to do that is to vote for this amendment.

So vote against tabling the Thurmond-Dorgan amendment and give the Justice Department the role they should have to do what should be done for the consumers of this country.

Mr. President, I reserve the remainder of the time.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I want to say to the Senate this. This amendment protects consumers and enhances competition. It does not gut this bill. That is an error. It provides for the Department of Justice to carry out the antitrust analysis of Bell company applications to enter long distance. This is the special expertise of the Department of Justice. My amendment limits the FCC to reviewing other areas and not duplicating DOJ. I am confident that this will reduce bureaucracy and eliminate redundancy of Government between roles of the DOJ and FCC. In other words, it leaves with the FCC to determine issues in which they have expertise. It leaves to the Justice Department determinations in which they have expertise. And that is the way it ought to be.

The PRESIDING OFFICER. The Senator from South Dakota has 2 minutes—a minute and 58 seconds.

Mr. PRESSLER. Mr. President, I yield the remainder of my time.

Mr. THURMOND. Mr. President, I yield any time I have left.

Mr. PRESSLER. Mr. President, I make a motion to table the Thurmond amendment, No. 1265.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 57, nays 43, as follows:

[Rollcall Vote No. 250 Leg.]

YEAS—57

Abraham	Faircloth	Lott
Ashcroft	Ford	Lugar
Baucus	Frist	Mack
Bennett	Gorton	McCain
Biden	Gramm	McConnell
Breaux	Grams	Moynihan
Brown	Gregg	Murkowski
Bryan	Hatch	Murray
Burns	Hatfield	Nickles
Byrd	Heflin	Nunn
Campbell	Helms	Packwood
Chafee	Hollings	Pressler
Coats	Hutchison	Roth
Cochran	Jeffords	Santorum
Coverdell	Johnston	Simpson
Craig	Kassebaum	Smith
Dole	Kempthorne	Stevens
Domenici	Kerry	Thomas
Exon	Kyl	Warner

NAYS—43

Akaka	Glenn	Pell
Bingaman	Graham	Pryor
Bond	Grassley	Reid
Boxer	Harkin	Robb
Bradley	Inhofe	Rockefeller
Bumpers	Inouye	Sarbanes
Cohen	Kennedy	Shelby
Conrad	Kerrey	Simon
D'Amato	Kohl	Snowe
Daschle	Lautenberg	Specter
DeWine	Leahy	Thompson
Dodd	Levin	Thurmond
Dorgan	Lieberman	Wellstone
Feingold	Mikulski	
Feinstein	Moseley-Braun	

So the motion to lay on the table the amendment (No. 1265), as modified, was agreed to.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Although my amendment was tabled, we will be back. It is very important to have an up and down vote on this amendment. I have filed my amendment at the desk, and it will be in order after cloture. We will then get to the direct vote on this important amendment.

AMENDMENT NO. 1264 WITHDRAWN

The PRESIDING OFFICER. Under the previous order, the underlying amendment has been withdrawn.

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until 2:15 p.m.

Thereupon, at 12:55 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. KYL).

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

AMENDMENT NO. 1275

(Purpose: To provide means of limiting the exposure of children to violent programming on television, and for other purposes)

Mr. CONRAD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.